145-368

RECORD, CASE No. 13,384.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 265.

MARIA J. GALLIHER, APPELLANT,

vs.

H. P. CADWELL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WASHINGTON.

FILED OCTOBER 18, 1888.

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1 "A."

This indenture witnesseth: That I, E. P. Cadwell, husband of H. P. Cadwell, party of the first part, for and in consideration of the sum of twenty thousand dollars, in coin of the United States of America, to me in hand paid by H. P. Cadwell, party of the second part, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part and to her heirs and assigns the following-described premises, situate, lying, and being in the county of Pierce, in the Territory of Washington, to wit: The whole of Votaw's addition to the city of Tacoma, Wash. Ter., except as hereinafter excepted, the said addition being situated and described as follows, to wit: The whole of lot four (4), in section ten (10), township twenty (20), range three (3) east, of Willamette meridian, excepting the following-described lots, to wit: Lots 11 & 12, in block 8430; lots 1, 2, 7, 8, 9, & 10, bl'k 8432; lots 1 & 2, bl'k 8434; lots 3, 4, 5, & 12, bl'k 8529; lot 1, bl'k 8534; lots 1, 2, 3, 4, 7, 8, 9, & 10, bl'k 8629; lots 9, 10, 11, & 12, bl'k 8631, & lots 1, 2, 3, & 4, bl'k 8632; also subject to a contract made and entered into by and between J. T. Baltzell & W. D. Tyler, wherein the said H. P. Cadwell agrees to convey all as stated in said contract:

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, her heirs and assigns
2 forever; and I, the said party of the first part, do hereby covenant to and with the said party of the second part, her heirs and assigns, that I am the owner in fee simple of said premises; that they are free from all incumbrances, and that I will warrant and defend the same from all lawful claims whatsoever.

Witness my hand and seal this 15th day of Oct., A. D. one thousand eight hundred and eighty-five.

E. P. CADWELL. [SEAL.]

Witnesses:
C. D. YOUNG.
W. T. RANIS.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

This certifies that on this 15th day of Oct., in the year of our Lord one thousand eight hundred and eighty-five, before me, a notary public in and for Pierce county, Washington Territory, personally appeared the within-named E. P. Cadwell, whose name — subscribed to the foregoing instrument as a party thereto, personally known to me to be the individual described in and who executed the within deed, and acknowledged the same to be his free act and deed.

3 In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal the day and year in this certificate first above written.

C. D. YOUNG,
Notary Public in and for Pierce County, Washington Territory.

1—265

4 [Endorsed:] Exhibit A (pl'ff). Filed Feb. 11, 1887. Elwood Evans, referee. Warranty deed from E. P. Cadwell to H. P. Cadwell, dated —— —, 1886. Received for record this 2d day of February, A. D. 1886, at 2 o'clock p. m., and recorded, at request of E. P. Cadwell, Feb'y 2d, A. D. 1886, in Book 20, 19 of Deeds, records of Pierce county, W. T., page- 297 & 298, as witness my hand and official seal this 2d day of Feb'y, A. D. 1886. W. B. Kelley, auditor of Pierce county, W. T. From —— ——. $1. (Seal.)

5 "B."

This indenture witnesseth: That Henry L. Votaw and Anna J. Votaw, his wife, of Tacoma, Washington Territory, parties of the first part, for and in consideration of the sum of twenty-five thousand dollars, in lawful money of the United States of America, to them in hand paid by E. P. Cadwell, of the same place, party of the second part, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part and to his heirs and assigns the following-described premises, situate, lying, and being in the county of Pierce, in the Territory of Washington, to wit: Lot 4, block 814, as shown by the recorded plat of New Tacoma on file in the auditor's office of said county; also Votaw's addition to Tacoma, as shown by the recorded plat in the auditor's office of said county, except lots 11 & 12, block 8430; lots 1, 2, 7, 8, 9, & 10, block 8432; lots 1 & 2, bl'k 8434; lots 3, 4, 5, & 12, bl'k 8529; lot 1, bl'k 8534; lots 1, 2, 3, 4, 7, 8, 9, & 10, bl'k 8629; lots 9, 10, 11, & 12, bl'k 8631, and lots 1, 2, 3, & 4, bl'k 8632; said addition is comprised of and laid out upon lot 4, section 10, township 20 north, of range 3 east, Willamette meridian. This deed to Votaw's addition is made subject to a contract between H. L. Votaw, of the first part, and W. D. Tyler and J. T. Baltzell, of the second part, and recorded in Book 18, page 164, in the records
6 of deeds of Pierce county, Washington Territory:

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, his heirs and assigns forever; and we, the said parties of the first part, do hereby covenant to and with the said party of the second part, his heirs and assigns, that we are the owners in fee simple of said premises; that they are free from all incumbrances except said contract, and that we will warrant and defend the same from all lawful claims whatsoever, except as above mentioned.

Witness our hands and seals this 17th day of August, A. D. one thousand eight hundred and eighty-five.

HENRY L. VOTAW. [SEAL.]
ANNA J. VOTAW. [SEAL.]

Witnesses:
E. M. BEATTY.
THOS. CARROLL.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

This certifies that on this 27th day of August, in the year of our Lord one thousand eight hundred and eighty-five, before me, a notary public in and for Washington Territory, personally appeared the within-named H. L. Votaw and Anna J. Votaw, his wife, whose name- are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in
7 and who executed the within deed, and acknowledged the same to be their free act and deed; and I do further certify that I made known to Annie J. Votaw, wife of the said H. L. Votaw, the contents of the foregoing instrument and fully apprised her of her rights under the exemption and homestead laws of Washington Territory, and of the effect of her signing said deed, and that I examined her separate and apart from her husband and without his hearing, and that upon said separate examination she signed said deed and acknowledged that she voluntarily, of her own free will and without fear of or coercion from her husband, executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] THOMAS CARROLL,
Notary Public in and for Pierce County, Washington Territory.

8 [Endorsed:] Exhibit B. Filed Feb. 11, 1887. Elwood Evans, referee. Warranty deed from H. L. Votaw to E. P. Cadwell, dated —— —, 188–. Received for recor- this 1st day of September, A. D. 1885, at 9.45 o'clock a. m., and recorded, at the request of Campbell and Powell, September 1st, 1885, in Book 16 of Deeds, records of Pierce county, W. T., page 592, as witness my hand and official seal this 1st day of September, A. D. 1885. W. B. Kelley, auditor of Pierce county, W. T., by F. H. Gloyd, deputy. From —— ——.

(Here follows diagram marked p. 9.)

10 D.

This indenture witnesseth: That Thomas Carroll and Annie J. Carroll, his wife, parties of the first part, for and in consideration of the sum of eighteen hundred and fifty dollars, in lawful money of the United States of America, to them in hand paid by Henry L. Votaw, party of the second part, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part and to his heirs and assigns the following-described premises, situate, lying, and being in the county of Pierce, in the Territory of Washington, to wit, the undivided one-half (½) of the undivided one-sixth (⅙), in lot No. four (4), in section No. ten (10), township No. twenty (20) north, range three (3) east, of Willamette meridian; also the undivided one-half (½) of lots twenty (20) & twenty-one (21), in block fifteen hundred and eight (1508), New Tacoma, Washington Territory:

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, his heirs and assigns forever; and we, the said parties of the first part, do hereby covenant to and with the said party of the second part, his heirs and assigns, that we are the owners in fee simple of said premises; that they are free from all incumbrances, and that we will warrant and defend the same from all lawful claims whatsoever.

11 Witness our hands and seals this 10th day of April, A. D. one thousand eight hundred and eighty-four.

THOS. CARROLL. [SEAL.]
ANNIE J. CARROLL. [SEAL.]

Witnesses:
F. W. BASHFORD.
M. WARD.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

This certifies that on this tenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, before me, a notary public in and for Pierce county, Washington Territory, personally appeared the within-named Thomas Carroll and Annie J. Carroll, his wife, of Pierce county, W. T., whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who executed the within deed, and acknowledged the same to be their free act and deed; and I do further certify that I made known to Annie J. Carroll, wife of the said Thomas Carroll, the contents of the foregoing instrument and fully apprised her of her rights under the exemption and homestead laws of Washington Territory, and of the effect of her signing said deed, and that I examined her separate and apart from her husband, without his hearing, and that upon said separate examination she signed said deed and acknowledged that she voluntarily, of her own free will, without fear of or coercion from her husband, executed the same.

12 In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] F. W. BASHFORD,
Notary Public in and for Pierce County, Washington Territory.

Filed and recorded at 3 o'clock p. m., June 2d, A. D. 1884.
W. B. KELLY,
County Auditor.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelly, auditor in and for Pierce county, Washington Territory, hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument of writing which was filed for record in my office at 3 o'clock p. m., June 2nd,

1884, and was recorded at page 201 of volume 16 of Deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 26th day February, 1887.

[SEAL.] W. B. KELLY,
Auditor Pierce Co., W. T.,
By F. H. GLOYD, *Deputy.*

13 [Endorsed:] Exhibit "D," pl'ff. Filed Feb. 11th, 1887. Elwood Evans, referee. Thomas Carroll *et ux.* to Henry L. Votaw. Warranty deed. Copy. $2.00.

14 "E."

This indenture witnesseth: That we, Albert H. Garretson and Emma L. Garretson (husband and wife), parties of the first part, for and in consideration of the sum of five thousand dollars, in lawful money of the United States of America, to them in hand paid by Henry L. Votaw, party of the second part, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part and to his heirs and assigns the following-described premises, situate, lying, and being in the county of Pierce, in the Territory of Washington, to wit:

The undivided five-twelfths ($\frac{5}{12}$) of lot No. four (4), in section No. ten (10), township No. twenty (20) north, range three (3) east, of the Willamette meridian:

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, his heirs and assigns forever; and we, the said parties of the first part, do hereby covenant to and with the said party of the second part, his heirs and assigns, that we are the owners in fee simple of said premises; that they are free from all incumbrances, and that we will warrant and defend the same from all lawful claims whatsoever.

Witness our hands and seals this 18th day of April, A. D. one thousand eight hundred and eighty-four.

15 ALBERT H. GARRETSON. [SEAL.]
EMMA L. GARRETSON. [SEAL.]

Witnesses:
JOHN E. CRAIG.
JAMES LYNSH.

STATE OF IOWA, } ss:
County of Lee, }

This certifies that on this eighteenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, before me, a notary public in and for the county of Lee and State of Iowa, personally appeared the within-named Albert H. Garretson and Emma L. Garretson, his wife, whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who executed the within deed, and acknowledged the same to be their free act and deed; and I do fur-

ther certify that I made known to Emma L. Garretson, wife of the said Albert H. Garretson, the contents of the foregoing instrument and fully apprised her of her rights under the exemption and homestead laws of Washington Territory, and of the effect of her signing said deed, and that I examined her separate and apart from her husband, without his hearing, and that upon said separate examination she signed said deed and acknowledged that she voluntarily, of her own free will and without fear of or coercion from her husband, executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

16 MARION R. KING,

[SEAL.] *Notary Public in and for Lee County, Iowa.*

Filed and recorded at 2 o'clock p. m., May 19th, A. D. 1884.

W. B. KELLEY,
County Auditor.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for Pierce county, W. T., hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office at 2 o'clock p. m., May 19th, 1884, and was recorded at page 189 of volume 16 of Deeds, as the same now appears from the records thereof in my office.

Witness my hand and official seal this 26th day of February, A. D. 1887.

[SEAL.] W. B. KELLEY,
County Auditor,
By F. H. GLOYD, *Deputy.*

17 [Endorsed:] Exhibit E (pl'ff). Filed Feb. 11, 1887. Elwood Evans, referee. A. H. Garretson *et ux.* to Henry L. Votaw. Warranty deed. Copy. 16, 189. $2.00.

18 "F."

Know all men by these presents that we, Thomas Carroll and Anna J. Carroll, husband and wife, of the county of Henry and State of Iowa, for the consideration of one thousand eight hundred ($1,800) dollars, hereby convey to Henry L. Votaw, of the county of Henry and State of Iowa, the following-described real estate, situate in the county of Pierce and State of Washington Territory, to wit:

The undivided one-half of the undivided one-half of lot four (4), section No. ten (10), in township twenty (20) north, of range three (3) east, of Willamette meridian; the whole lot 4, containing fifty-seven and one-fourth acres (57¼); and we warrant the title of the same against all persons whomsoever.

In witness whereof we have hereunto set our hands this 4 day of December, 1883.

THOMAS CARROLL.
ANNIE J. CARROLL.

STATE OF IOWA, } ss:
Henry County, }

Before me, the undersigned, a notary public in and for the said county, personally appeared Thomas Carroll & Annie J. Carroll, his wife, who are personally known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the same to be their voluntary act and deed.

Given under my hand and official seal this 5th day of December, 1883.

[SEAL.] WM. B. DONALDSON,
Notary Public.

19 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for Pierce county, Washington Territory, hereby certify that the foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office at 9 o'clock a. m., on the 20th day of March, A. D. 1884, and was recorded at page 582 of volume 14 of Deeds, as now appears from the record thereof in my office.

Witness my hand and official seal this 25th day of February, 1887.

[SEAL.] W. B. KELLEY,
Auditor Pierce County, W. T.,
By F. H. GLOYD, *Deputy.*

[Endorsed:] Exhibit F, pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Thomas Carroll *et ux.* to Henry L. Votaw. Warranty deed. Copy. 14, 582. $1.50.

20 "G," PL'FF.

This indenture, made the fourteenth day of March, in the year of our Lord one thousand eight hundred and eighty-four, between Thomas Carroll and Annie J. Carroll, his wife, party of the first part, and Albert H. Garretson, of Lee Co., Iowa, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration — the sum — 2,500.00 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns all that certain lot, piece, or parcel of land, situate, lying, and being in the county of Pierce and Territory of Washington, and particularly bounded and described as follows, to wit:

The undivided one-sixth ($\frac{1}{6}$) interest in lot No. four (4), in section No. ten (10), township No. twenty (20) north, range three (3) east, of the Willamette meridian—

Together *will* all and singular the tenements, hereditaments, and

appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, 21 interest in said property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part- of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances :

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOS. CARROLL. [SEAL.]
ANNIE J. CARROLL. [SEAL.]

Signed and delivered in the presence of—
T. L. NIXON.
H. C. CLEMENT.

TERRITORY OF WASHINGTON, } ss :
County of Pierce, }

This certifies that on this fourteenth day of March, in the year of — Lord one thousand eight hundred and eighty-four, before me, a notary public in and for Pierce county, Washington Territory, personally appeared the within-named Thomas Carroll and Annie J. Carroll, whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who executed the within deed, and acknowledged the same to be their free act and deed ; and I do further certify that I made known to Annie J. Carroll, wife of the said Thomas 22 Carroll, the contents of the foregoing instrument and fully apprised her of her rights under the exemption and homestead laws of Washington Territory, and of the effect of her signing said deed, and that I examined her separate and apart from her husband and without his hearing, and that upon said separate examination she signed said deed and acknowledged that she voluntarily, of her own free will and without fear of or coercion from her husband or any other person, executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

T. L. NIXON,
[SEAL.] *Notary Public in and for Pierce County, Washington Ter.*

TERRITORY OF WASHINGTON, } ss :
County of Pierce, }

I, W. B. Kelley, auditor in and for Pierce county, Washington Territory, hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record*ed* in my office at 4 o'clock

p. m., March 15th, 1884, and was recorded at pages 555 and 556 of volume 14 of Deeds, as the same now appears from the record thereof in my office.

23 Witness my hand and official seal this 25th day of February, A. D. 1887.

W. B. KELLEY,
Auditor Pierce Co., W. T.,
By F. H. GLOYD, *Deputy.*

[SEAL.]

[Endorsed:] Exhibit "G," pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Thomas Carroll *et ux.* to A. H. Garretson. Deed. Copy. $2.00. 14, 555.

24 "H," PL'FF.

Know all men by these presents that we, Henry L. Votaw and Ann J. Votaw, husband and wife, of the county of Henry and State of Iowa, for the consideration of fourteen hundred dollars, hereby convey to Albert H. Garretson, of the county of Lee and State of Iowa, the following-described real estate, situate in the county of Pierce and Territory of Washington, to wit:

The undivided one-fourth (¼) of lot four (4), section number ten (10), in township number twenty (20) north, of range three (3) east, of Willamette meridian, the whole of lot four (4), containing fifty-seven and one-fourth acres (57¼).

And we warrant the title of the same against all persons whomsoever.

In witness whereof we have hereunto set our hands this 11th day of December, 1883.

HENRY L. VOTAW.
ANNA J. VOTAW.

STATE OF IOWA, } ss:
Henry County, }

Before me, the undersigned, a notary public in and for said county, personally appeared Henry L. Votaw and Ann J. Votaw, husband and wife, who are personally known to me to be the identical person- whose names are subscribed to the foregoing instrument as grantors, and acknowledged the same to be their voluntary act and deed.

Given under my hand and official seal this 11th day of Dec., 1883.

THOMAS CARROLL,
Notary Public.

[SEAL.]

25 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for the county of Pierce, Territory of Washington, hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office at 2 o'clock p. m., March 5th, 1884, and was recorded at page 502 of volume 14 of Deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 25th day of February, A. D. 1887.

[SEAL.]

W. B. KELLEY,
County Auditor,
By F. H. GLOYD, *Deputy.*

[Endorsed:] Exhibit "H," pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Henry L. Votaw *et ux.* to A. H. Garretson. $1.50. 14, 502.

26 I.

Elizabeth Wing *et al.*
"to"
Henry L. Votaw & Thos. Carroll.

Know all men by these presents that we, Elizabeth Wing, widow, & J. B. Wing & Jane Wing, his wife, of the county of Henry and State of Iowa, for the consideration of twenty-seven hundred dollars, hereby convey to Henry L. Votaw & Thomas Carroll, of the county of Henry and State of Iowa, the following-described real estate, situate in the county of Pierce and Ter. of Washington, to wit:

Lot four (4), section ten (10), township twenty (20), range three (3) east, of Willamette meridian, W. T., containing fifty-seven and one-fourth acres, more or less (57¼); also to lot nineteen (19), block 705, town. of New Tacoma; also lots twenty, twenty-one, twenty-two (20, 21, 22), block 1508, New Tacoma, Washington Territory, the foregoing being a conveyance of all the lands belonging to the estate of Dr. F. B. H. Wing at the time of settlement of said estate; and we warrant the title of the same against all persons whomsoever.

In witness whereof we have hereunto set our hands this 3rd day of September, 1883.

ELIZABETH WING.
J. B. WING.
JANE WING.

STATE OF IOWA, *Henry County,* } *ss:*

27 Before me, the undersigned, a notary public in and for said county, personally appeared Elizabeth Wing, J. B. Wing, and Jane Wing, his wife, who are personally known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the same to be their voluntary act and deed.

Given under my hand and official seal this 3d day of September, 1883.

[SEAL.]

J. BENTLY ROSE,
Notary Public.

STATE OF IOWA, *Henry County,* } *ss:*

I, M. L. Andrews, clerk of the district court of said county, do hereby certify that J. Bently Rose, Esq., whose name is suunty, do to the certificate to which this is attached, was at the datebscribed to wit, the 3rd day of September, A. D. 1883, a notary p thereof, said county, duly commissioned and qualified according tublic in

appears of record in my office; that full faith is due all his official acts as such, and that the signature purporting to be his is genuine, and that his certificate is in due form of law, and that by the laws of Iowa he is duly authorized to administer oaths and to take and certify acknowledgments and proofs of deeds and other instruments of writing.

In testimony whereof I hereunto set my hand and affix the seal of said court this 6 day of September, A. D. 1883.

M. L. ANDREWS,
Clerk of District Court.

[SEAL.]

28 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for the county of Pierce, Territory of Washington, hereby certify that the foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office at 6 o'clock p. m., September 17th, 1883, and was recorded at pages 723 & 724 of volume 13 of Deeds, as the same now appears from the records of my office.

Witness my hand and official seal this 25th day of February, A. D. 1887.

W. B. KELLEY,
County Auditor,
By F. H. GLOYD, *Deputy.*

[SEAL.]

29 [Endorsed:] Exhibit I, pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Elizabeth Wing and J. B. Wing and wife to Thomas Carroll and Henry L. Votaw. Copy. $2.00. 13, 728.

30 "K."

Know all men by these presents that I, Elizabeth Wing, widow, of the county of Henry and State of Iowa, for the consideration of five hundred dollars, hereby convey to J. Bently Wing, of the county of Henry and State of Iowa, the following-described real estate, situate in the county of Pierce and Territory of Washington, to wit:

Lots twenty (20), twenty-one (21), & twenty-two (22), in block (1508) fifteen hundred and eight;

Also the north eighteen (18) feet, part of lot nineteen (19), in block seven hundred and five (705), all in New Tacoma, Washington Territory;

Also lot four (4), section ten (10), township twenty (20), range three (3) (57¼ acres), in Pierce county, Washington Territory;

Also lot twenty-three (23), block 1508, New Tacoma, Washington Territory, this deed intending to convey the whole of the real estate belonging to the estate of F. B. H. Wing, deceased, situate in Washington Territory and none other;

And I warrant the title of the same against all persons whomsoever.

In witness whereof I have hereunto set my hand this 17th day of July, 1883.

ELIZABETH WING.

STATE OF IOWA, } ss:
Henry County, }

Before me, the undersigned, a notary public in and for said county, personally appeared Elizabeth Wing, widow, who is
31 personally known to me to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the same to be her voluntary act and deed.

Given under my hand and official seal this 17th day of July, 1883.

THOS. CARROLL.
Notary Public.

[SEAL.]

STATE OF IOWA, } ss:
Henry County, }

I, M. L. Andrews, clerk of the district court of said county, do hereby certify that Thos. Carroll, Esq., whose name is subscribed to the certificate to which this is attached, was at the date thereof, to wit, the 17th day of July, A. D. 1883, a notary public in said county, duly commissioned and qualified according to law, as appears of record in my office; that full faith is due all his official acts as such, and that the signature purporting to be his is genuine, and that his certificate is in due form of law, and that by the laws of Iowa he is duly authorized to administer oaths and to take and certify acknowledgments and proof of deeds and other instruments of writing.

In testimony whereof I have hereunto set my hand and affix the seal of said court this 23d day of July, A. D. 1883.

M. L. ANDREWS,
Clerk of District Court.

[SEAL.]

32 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for Pierce county, Washington Territory, hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office August 16th, 1883, at 4 o'clock p. m., and was recorded at pages 678 & 679 of volume 13 of Deeds, as now appears from the record thereof in my office.

Witness my hand and official seal this 24th day of February, A. D. 1887.

W. B. KELLEY,
Auditor Pierce Co., W. T.,
By F. H. GLOYD, *Deputy.*

33 [Endorsed:] Exhibit "K," pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Elizabeth Wing to J. Bentley Wing. Warranty deed. Copy. $2.00. 13, 678.

34 "L."

In the Probate Court of Pierce County, Washington Territory.

In the Matter of the Estate — F. B. H. WING, Deceased.

R. F. Raeubaugh, the administrator of F. B. H. Wing, deceased,

having on the 19th day of May, 1883, filed in this court his final account, showing, among other things, that all claims against said estate (except the expenses and costs of closing up the administration of said estate) have *have* been finally settled, and having on the 21st day of May, 1883, filed his petition praying for a decree of the court setting over, distributing, and adjudging all the real property belonging to said estate to Elizabeth Wing, of Salem, Henry county, Iowa, the mother of said deceased, and afterwards, on the 28th day of June, 1883, upon satisfactory proof to said court by affidavit of George Ackly, principal clerk of the Weekly Ledger, a weekly newspaper published weekly in Pierce county, Washington Territory, aforesaid, of due publication of the order to show cause why distribution should not be made for four successive weeks before the 28th day of June, A. D. 1883, as directed by this court and as required by law in the distribution of real estate, the said administrator appearing, by his counsel, the court proceeding
35 to the hearing of said petition; and it appearing that the said Wing died in New Tacoma, in said Pierce county, on or about the 14th day of January, 1882, leaving him surviving his said mother, the said Elizabeth Wing, and leaving him surviving neither father, widow, or children: Now, on this 28th day of June, 1883, on motion of R. F. Hensill, counsel for said administrator, and no exception being filed or made by any person interested in said estate or otherwise, it is hereby ordered, adjudged, and decreed that all the real estate of said F. B. H. Wing, deceased, in the hands of said administrator and hereinafter particularly described be distributed and set over to the said Elizabeth Wing, mother of said deceased, namely, a certain parcel or tract of land situate, lying, and being in Pierce county, Washington Territory, and more particularly described as follows:

Beginning at the northeast (N. E.) corner of lot numbered nineteen (19), in block numbered seven hundred and five (705), as laid down on the recorded plat of New Tacoma, in Pierce county, Washington Territory, thence from said northeast corner running along the north side of said lot (19) nineteen to the northwest (N. W. cor.) corner of said lot; thence run eighteen (18) feet south on "C" street; thence run east (E.) across said lot, the distance being thirty
36 (30) feet; thence north to the point of beginning, conveying an area of eighteen by thirty (18 by 30) feet, more or less; also certain other pieces or parcels of land situate in Pierce county, Washington Territory, more particularly described as follows, namely: Lots numbered twenty-one (21) and twenty-two (22), in block numbered fifteen hundred and eight (1508), in New Tacoma, in said county, according to the recorded plat thereof filed in the office of the auditor of said county.

Also a certain other piece of parcel of land situated in Pierce county, Washington Territory, and more particularly described as follows:

Lot number four (4) of section ten (10), in township twenty (20) north, of range three E., of the Willamette meridian, in Washington Territory, containing fifty-seven $\frac{25}{100}$ (57.25) acres.

And it is further ordered that a certified copy of this order be recorded in the office of the county auditor of Pierce county, Washington Territory.

Done in open court this 28th day of June, A. D. 1883.

[SEAL.] SAM. C. HOWES,
Probate Judge.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

37 I, Sam. C. Howes, judge and *ex officio* clerk of the probate court of Pierce county, Washington Territory, do hereby certify that the foregoing is a full, true, and correct copy of the records of this court in the above matter, entitled and order of distribution.

In witness whereof I have hereunto set my hand and affixed the seal of said probate court this 28th day of June, A. D. 1883.

[SEAL.] SAM. C. HOWES,
Judge and ex Officio Clerk of said Probate Court.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for Pierce county, Washington Territory, hereby certify that the above and foregoing is a full, true, and correct copy of an instrument of writing which was filed for record in my office June 28th, 1883, at 2 o'clock p. m., and was recorded at pages 415 & 416 of volume 13 of Deed Records of said county, as now appears from said records.

Witness my hand and official seal this 24th day of February, 1887.

W. B. KELLEY,
38 *County Auditor,*
[SEAL.] By F. H. GLOYD, *Deputy.*

39 [Endorsed:] Exhibit L, pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee. Estate of F. B. H. Wing, deceased. Order of distribution. Copy. 2.50. 13, 415.

40 "M."

M. L. 37592. B. (4–205.) S. McL. W. D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 26, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Francis B. H. Wing, founded on Olympia, Washington Territory, cash entry No. 6026, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of General Land Office.

(5425–2,000.)

41 THE UNITED STATES OF AMERICA:

Certificate No. 6026.

To all to whom these presents shall come, Greeting:

Whereas Francis B. H. Wing, of Pierce county, Washington Territory, has deposited in the General Land Office of the United States a certificate of the register of the land office at Olympia, Washington Territory, whereby it appears that full payment has been made by said Francis B. H. Wing, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for the lot numbered four, of section ten, in township twenty north, of range three east, of Willamette meridian, in Washington Territory, containing fifty-seven acres and twenty-five hundredths of an acre according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Francis B. H. Wing:

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Francis

42 B. H. Wing and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Francis B. H. Wing and to his heirs and assigns forever, subje-t to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof I, Chester A. Arthur, President of the United — of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of April, in the year of our Lord one thousand eight hundred and eighty two, and of the Independence of the United States the one hundred and sixth.

By the President:

CHESTER A. ARTHUR,

[L. S.] By WM. H. CROOK, *Secretary.*

S. W. CLARK,

Recorder of the General Land Office.

Recorded, vol. 11, page 403.

43 [Endorsed:] Exhibit M, pl'ff. Filed Feb. 11, 1887. Elwood Evans, referee.

44

Copy.

Township No. —, Range

Description of tract.				Contents.		Rate per acre.		Purchase-money.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.
Lot 1	3	20	3 E.	54	.....	.....	.....	.....	.....
" 5	"	"	"	4	40	.....	.....	.....	.....
Lots 3 and 4	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lot 2	3	"	"	51	.....	.....	.....	.....	.....
And lots 1 & 8	4								
Lot 10	4	"	"	1	35	.....	.....	.....	.....
" 11	4	.....	.....	21	10	.....	.....	.....	.....
" 9	"	"	"	12	40	.....	.....	.....	.....
Lots 6 & 7	"	"	"	62	45	.....	.....	.....	.....
W. ½ of N. E. ¼ & W. ½ of S. E. ¼	5	"	"	167	23	.....	.....	.....	.....
N. W. ¼ of N. W. ¼	"	"	"	.....	.....	.....	.....	.....	.....
Lots 1, 5, & 6	"	"	"	2	87	.....	.....	.....	.....
S. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, & N. E. ¼ of S. W. ¼	"	"	"	160	.....	.....	.....	.....	.....
N. E. ¼	6	"	"	173	24	.....	.....	.....	.....
N. W. ¼	"	"	"	163	89	.....	.....	.....	.....
E. ½ of S. E. ¼ & W. ½ of S. W. ¼	6 5	"	"	160	.....	.....	.....	.....	.....
W. ½ of S. E. ¼ & E. ½ of S. W. ¼	6	"	"	160	.....	.....	.....	.....	.....
Lots 6 & 7	"	"	"	71	04	.....	.....	.....	.....
S. E. ¼ of S. W. ¼	5	"	"	.....	.....	.....	.....	.....	.....
S. E. ¼ of S. W. ¼	5	"	"	.....	.....	.....	.....	.....	.....
Lots 3 & 4	7	"	"	.....	.....	.....	.....	.....	.....
Lots 3 & 4	"	"	"	72	71	.....	.....	.....	.....
W. ½ of N. E. ¼ & S. ½ of N. W. ¼	"	"	"	160	.....	.....	.....	.....	.....
N. E. ¼ of N. W. ¼	"	"	"	.....	.....	.....	.....	.....	.....
W. ½ of N. E. ¼	"	"	"	.....	.....	.....	.....	.....	.....
N. E. ¼ of N. W. ¼ & lot 1	"	"	"	.....	.....	.....	.....	.....	.....
E. ½ of S. E. ¼	"	"	"	.....	.....	.....	.....	.....	.....
Lot 2 & S. E. ¼ of N. W. ¼	"	"	"	.....	.....	.....	.....	.....	.....
N. E. ¼	"	"	"	.....	.....	.....	.....	.....	.....
E. ½ of S. W. ¼ & W. ½ of S. E. ¼	"	"	"	160	.....	.....	.....	.....	.....
W. ½ of N. E. ¼ & E. ½ of N. W. ¼	8	"	"	160	.....	.....	.....	.....	.....
E. ½ of N. E. ¼	8								
Lot 5	4	"	"	161	44	.....	.....	.....	.....
Lot 7	5								
Lots 6 & 7	9								
E. ½ of N. E. ¼ of	7	"	"	160	.....	.....	.....	.....	.....
W. ½ of N. W. ¼	8								
E. ½ of S. E. ¼	8	"	"	80	.....	.....	.....	.....	.....
E. ½ of S. W. ¼ & W. ½ of S. E. ¼	"	"	"	160	.....	.....	.....	.....	.....
W. ½ of S. W. ¼	"	"	"	80	.....	.....	.....	.....	.....
Parts of secs. 3, 4, 9, and	10	"	"	318	59	.....	.....	.....	.....
Parts of secs. 4 and	5	"	"	321	18	.....	.....	.....	.....
S. ½ of S. ½	9	"	"	160	.....	.....	.....	.....	.....
Lots 4, 5; N. W. ¼ of S. E. ¼ & N. ¼ of S. W. ¼	"	"	"	162	52	.....	.....	.....	.....
Lot 4	10	"	"	57	25	.....	.....	.....	.....
N. E. ¼ of S. E. ¼ & lot 3	9	"	"	122	52	.....	.....	.....	.....
N. W. ¼ of S. W. ¼ & lot 5	10								
Lots 2 & 3	"	"	"	37	48	.....	.....	.....	.....

I hereby certify the above to be a true abstract from the original plats and tract

45 [Endorsed:] Exhibit "N," plaintiff.

(4–600.)

No. —, District of —.

Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	Character of entry.	Date of patent.	Where recorded. Volume.	Where recorded. Page.
John Gale	Dec. 6, 1869	2450	Pre. C. E.	Nov. 15, '70	5	93
N. P. R. R. selection	Aug. 27, 1884					
Hd. application of John Gale for additional h peal filed Febr'y 19, '86.	d. presented Febr'y 2d,			1886, & refused; ap-		
David Kelly	March 29, 1871	3627	Pre. C. E.	Aug. 1, '72	7	477
John S. Strengham	March 30, 1883	1613	Final homestead	Dec. 4, '84	4	446
Huston J. Chapman	June 27, 1874	4920	Cash entry	May 1, '74	9	372
Ira Cogswell	Sept. 11, "	4961	Pre. C. E.	April 15, '75	9	451
John Gale	July 8, 1873	4680	Cash entry	Nov. 1, '73	9	169
Milas Galliher	Oct 27, 1868	1470	Pre. C. E.	Aug. 30, '75	9	480
Job Carr	Aug. 13, 1872	303	Final hd.	Nov. 5, '72	2	92
N. P. R. R. selection.						
Thomas Hood	Sept. 10, 1868	1328	Cash entry	Aug. 20, '69	3	414
David Canfield	" " "	1329	" "	" " "	3	415
William Byrd	Feb. 15, 1873	4550	" "	June 2, '73	9	30
D. W. C. Davidson	Nov. 17, 1869	2409	" "	Oct. 20, '70	5	25
A. W. Stewart	Sept. 24, 1872	4405	" "	Dec. 5, '72	8	450
Geo. W. Byrd	July 22, 1874	4929	" "	March 1, '75	9	367
Jas. S. Book, Porterfield scrip dec. of Com'r adverse to R. R. Co.	No. 48, appealed from		April 2, 1884; appeal June 20, '84;			
Donald McRae, hd. applicati to R. R Co.	on, March 21, 18	84; appeal June 23, '84;		dec. of Com'r adverse		
Hd. application of Hugh F. Feb. 21, '86.	McKay, presented Ja	nuary 18, '86, and		refused; appeal filed		
N. P. R. R. selection	Aug. 27, '84					
James F. Elder	Oct. 6, 1885	9496	Cash entry.			
Add. hd. app'n of W. J. Libby peal to Hon. Secretary from	presented M'ch 17, 18 action of Com.	84, & refused; appealed June 23, '84; ap- allowing Elder's entry Nov. 27, '85.				
Add. hd. app'n of Edgar Perci appeal to Hon. Secretary from	val, presented M'ch 17, 1884, & refused; action of Com. allowing Elder's entry Nov. 27, '85.			appealed June 23, '84;		
Add. hd. app'n of Henry M. C.	Seaman, presented June 14, 1883, and refused.					
Add. hd. app'n of Jacob G.	Vole, presented June 15, 1883, and refused.					
Hd. application of Walter S. appealed June 23, '84.	Bowen, presented M'ch 19, 1881, and refused;					
D. S. of P. M. Annis, presented	and refused April 10, '84; appealed June 23, '84.					
James N. Junett	Sept. 25, '82	4444	Hd.			
Robert Sprowl	June 9, 1875	5100	Pre. C. E.	Dec. 3, '75	10	205
S. S. Hilton	January 5, 1869	1655	Pre. C. E.	Sept. 20, '69	3	423
J. T. Nash	June 28, 1869	2226	Cash entry	May 2, '70	4	354
Walter C. Wallace	July 11, 1874	4926	Pre. C. E.	Mar. 1, '75	9	369
William F. Gibson	Aug. 13, 1870	2811	" "	Oct. 10, '70	8	301
M. M. McCarver	July 8, 1873	4679	" "	Feb. 25, '74	9	249
Don. crt. 564, Nicholas Delin	Jan. 20, 1873	.....	Notification No. 505; settlement May 20, '53.	Feb. 27, '75	3	153
" " 480, Peter Judson	Feb'y 14, 1871	.....	Notification No. 771; settlement Oct. 15, '53; S. ½ of claim to husband and N. ½ of wife Anna.	June 30, '73	3	12
N. P. R. R. selection	Aug. 27, 1884					
John F. Gohlson	May 3, 1869	2068	Pre. C. E.	Aug. 30, 1882	12	129
Francis B. H. Wing	Dec. 20, 1881	6026	Timber C. E.	April 20, '82	11	403
Milas Galliher	May 18, 1869	204	Cash entry	June 1, '70	356	203
Milas Galliher	" " "	2129	" "	Oct. 10, '71	5	142

U. S. LAND OFFICE, OLYMPIA, W. T., *Feb. 26th*, 1887.

books on file in this office.

JOHN Y. OSTRANDER, *Register*.

46 EXHIBIT O, PLAINTIFF. Filed March 2, 1887. Elwood Evans, Referee.

Know all men by these presents that we, Elizabeth Wing, widow, and J. B. Wing and Jane Wing, his wife, of the county of Henry and State of Iowa, for the consideration of twenty-seven hundred dollars, hereby convey to Henry L. Votaw & Thomas Carroll, of the county of Henry and State of Iowa, the following-described real estate, situate in the county of Pierce and Ter. of Washington, to wit:

Lot four (4), section ten (10), township twenty (20), range three (3) east, of Willamette meridian, W. T., containing fifty-seven and one-fourth acres, more or less, (57¼); also lot nineteen (19), block 705, town of New Tacoma; also lots twenty, twenty-one, twenty-two (20, 21, 22), block 1508, New Tacoma, Washington Territory, the foregoing being a conveyance of all the lands belonging to the estate of Dr. F. B. H. Wing at the time of settlement of said estate; and we warrant the title of the same against all persons whomsoever.

In witness whereof we have hereunto set our hands this 3rd day of Sept., 1883.

ELIZABETH WING. [L. S.]
J. B. WING. [L. S.]
JANE WING. [L. S.]

Witnesses to signature of Elizabeth Wing:
J. B. ROSE.
C. L. GARRETSON.

STATE OF IOWA, } ss:
Henry County, }

47 Before me, the undersigned, a notary public in and for said county, personally appeared Elizabeth Wing, J. B. Wing, and Jane Wing, his wife, who are personally known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the same to be their voluntary act and deed.

Given under my hand and official seal this 3d day of September, 1883.

[SEAL.] J. BENTLY ROSE,
Notary Public.

STATE OF IOWA, } ss:
Henry County, }

I, M. L. Andrews, clerk of the district court of said county, do hereby certify that J. Bently Rose, Esq., whose name is subscribed to the certificate to which this is attached, was at the date thereof, to wit, the 3rd day of September, A. D. 1883, a notary public in said county, duly commissioned and qualified according to law, as appears of record in my office; that full faith is due all his official acts as such, and that the signature purporting to be his is genuine, and that his certificate is in due form of law, and that by the laws of Iowa

he is duly authorized to administer oaths and to take and certify acknowledgments and proof of deeds and other instruments of writing.

In testimony whereof I hereunto set my hand and affix the seal of said court this 6 day of September, A. D. 1883.

M. L. ANDREWS,
Clerk of District Court.

48 [SEAL.]

Filed and recorded, at request of Sears and Ashton, July 7th, A. D. 1886, at 11 o'clock a. m.

W. B. KELLEY,
County Auditor,
By F. H. GLOYD, *Deputy.*

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, W. B. Kelley, auditor in and for said county, hereby certify that the above and foregoing instrument of writing is a full, true, and correct copy of an instrument in writing, which was filed for record in my office at 11 o'clock a. m., July 7th, 1886, and was recorded on page 794 of vol. 18 of Deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 28th day of February, A. D. 1887.

[SEAL.]

W. B. KELLEY,
Auditor Pierce Co., W. T.,
By F. H. GLOYD, *Deputy.*

49 [Endorsed:] Exhibit O, plaintiff. Filed March 2, 1887. Elwood Evans, referee. Elizabeth Wing *et al.* to H. L. Votaw & Thos. Carroll. Copy. $2.00.

50 C. (4–207.)

CADWELL
vs.
GALLIHER.

EXHIBIT A, DEFENDANT. E. E., Referee.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 24th,* 1886.

I, W. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of homestead entry papers of Silas Galliher, No. 1615, Olympia, W. T., series, application of his widow, made Nov. 23, '80, to purchase the land covered by said entry; office letter of Dec. 14, 1880; acting Secretary's decision of June 1, 1881; supplemental application and proof and office letter of April 22, 1884, are true and literal exemplifications of the original papers on file in this office and of the letter records pertaining to said case.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
505—1,500. *Commissioner of General Land Office.*

51 *Receiver's Receipt No.* 1615; *Application No.* 1615.

Homestead.

RECEIVER'S OFFICE,
OLYMPIA, W. T., *August 10th*, 1872.

Received of Silas Galliher the sum of sixteen dollars — cents, being the amount of *and* compensation of register and receiver for the entry of lot 4 of section 10, in township 20 north, of range 3 east, under the act of Congress approved May 20, 1862, and March 21, 1864, entitled "An act to secure homesteads to actual settlers on the public domain."

(57.25 acres at $2.50.)

$16. ROBERT G. STUART, *Receiver.*

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can at any time after six months pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

Electros (12628—100 M).

52 (4–062.)

Non-Mineral Affidavit.

COUNTY OF THURSTON }
Territory of Washington, } *ss:*

Maria J. Galliher, being duly sworn according to law, deposes and says that *he* is the widow of Silas Galliher, who was a homestead applicant for Government title to the lot 4, of sec. 10, t'p 20 N., R. 3 E.; that *he* is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that *his* knowledge of said land is such as to enable *him* to testify understandingly with regard thereto; that there is not, to *his* knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to *his* knowledge,

any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that *his* application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

MRS. MARIAH J. GALLIHER.

Subscribed and sworn to before me this 23rd day of November, A. D. 1880, and I hereby certify that the foregoing affidavit was read to the said Maria J. Galliher previous to *his* name being subscribed thereto, and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

J. T. BROWN,
Register of the Land Office.

(12594–100,000.)

53 (4–063.)

Homestead.

(*Affidavit.*)

LAND OFFICE AT OLYMPIA, W. T., *Aug.* 10, 1872.

I, Silas Galliher, of Pierce Co., W. T., having filed my application, No. —, for an entry under the provisions of the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," do solemnly swear that I am the head of a family and a native-born citizen of the United States; that said application No. — is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit and not directly or indirectly for the benefit or use of any other person or persons whomsoever, neither have I perfected or heretofore abandoned an entry made under this act.

SILAS GALLIHER.

Sworn to and subscribed this tenth day of August, 1872, before—

J. P. CLARK,
Register of the Land Office.

54 Homestead.

Application No. 1615.

LAND OFFICE AT OLYMPIA, W. T., *Aug.* 10, 1872.

I, Silas Galliher, of Pierce Co., Wash. Terr'y, do hereby apply to enter, under the provisions of the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on public domain," the lot 4, of section 10, in township 20 north, of range 3 E., containing 57.25 acres.

SILAS GALLIHER.

LAND OFFICE AT OLYMPIA, W. T., *August* 10, 1872.

I, J. P. Clark, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under the homestead act of May 20, 1862, and that there is no prior valid adverse right to the same.

J. P. CLARK, *Register.*

55 [Endorsed:] No. 1. No. 1615. Homestead application. See to H. L. Votaw, June 6, 1885. H. W. Silas Galliher. Olympia, W. T., Aug. 10, 1872. Sect. 10, town. 20, range 3 E. Cancelled. See letter to R. and R. Dec. 4, 1879. Expired. D. T. P. At 2.50 per acre. See letter to R. and R. Dec. 14, 1880, refusing to allow widow to pay for land under 2 sec. of act of June 15, '80. D. T. P. 419, C 1. Department of the Interior, L. & R. R. div. Received Mar. 20, 1881. See letter to R. & R. June 4, 1881, transmitting copy of Sec'y's decis'n affirming the decision of this office. D. T. P. 5 N. and E.—52.

Over.

See to R. and R. Ap'l 22, 1884, rejecting the 2d appli. to purchase under act of June 15, 1880; also see to R. & R. June 20, 1884.

D. T. P.

56 In the United States Land Office at Olympia, Washington Territory.

Mrs. MARIA J. GALLIHER, being duly sworn, says:

I reside in Pierce county, Washington Territory, and am the widow of Silas Galliher, who made homestead entry No. 1615 at the land office at Olympia, W. T., for lot 4, of sec. 10, t'p 20 N., R. 3 E., of the Willamette meridian.

The said Silas Galliher was, on the 10th day of August, 1872, duly qualified to enter and hold lands under the homestead laws of the United States. He was a native-born citizen of the United States, and was, on August 10th, 1872, the head of a family consisting of wife and children. He never before made a homestead entry, and said entry was for his own exclusive use and benefit and not directly or indirectly for the use or benefit of any other person or persons whomsoever.

The said Silas Galliher died on the 18th day of April, A. D. 1873, leaving myself, his wife, and 6 children, all minors. I now apply to purchase the said lot 4, of sec. 10, t'p 20 N., R. 3 E., under the provisions of sec. 2 of an act entitled An act relating to the public lands of the United States, approved June 15th, 1880, and further say that the fees and commissions paid by the said Silas Galliher on entry of said homestead No. 1615 have not been repaid to me,

57 and that no application therefor has been made, and that neither the said Silas Galliher nor myself have been prosecuted for or proceeded against on account of any trespass committed upon or material taken from this or any of the public lands of the United States.

MRS. MARIAH J. GALLIHER.

Sworn to and subscribed before me, at my office, in Olympia, W. T., this 23d day of November, 1880, the statement as written having been read over to the affiant before she signed the same.

I further certify that the affiant is well known in this community as the widow of Silas Galliher, who made the homestead entry No. 1615.

J. T. BROWN,
Register of the Land Office.

58 [Endorsed:] No. 2. Appli. of Maria Galliher to purchase under the act of June 15, 1880, the land embraced in her dec. husband's home ent. No. 1615. 1880. Inc. 2. 76869.

59 Refer in reply to this initial: —.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *June* 1, 1881.

The Commissioner of the General Land Office.

SIR: I have considered the appeal of Mariah J. Galliher, widow of Silas Galliher, deceased, from your decision of September 14, 1880, rejecting her application to purchase *to purchase*, under the 2d section of the act of June 15, 1880, lot No. 4, section 10, township 20 N., R. 3 east, Olympia, W. T.

It appears that this tract was embraced in the homestead entry of said Silas Galliher, made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was cancelled December 4, 1879, for want of final proof within the sta-utory period of 7 years after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no claim thereto until November 23, 1880, the date of her present application.

The 2d section of the act of June 15, 1880, provides "that persons who have heretofore, under any of the homestead laws, entered lands properly subject to such entry * * * may entitle
60 themselves to said lands by paying the Government price therefor." * * *

The purchase herein provided is in substitution of the continued settlement and cultivation of five years required by the homestead laws and relates to existing homestead rights. Even the husband of Mrs. Galliher, if living, would have no right of purchase under said act, because his entry has been cancelled, and he would be a stranger to the land and to the record and with no greater right thereto during the continuance of such cancellation than any other person. His widow can have no better right than he.

It is not necessary to consider whether Mrs. Galliher may now make private entry of the tract under other laws, but clearly, in my opinion, under that of June 15, 1880, she has no right of purchase.

Your decision is affirmed, and the papers transmitted with your letter of March 26, 1881, are herewith returned.

Very respectfully,

A. BELL,
Acting Secretary.

61 [Endorsed:] General Land Office. 37099. Rec'd Jan. 2, 1881. Interior Dep't. Acting Sect., June 1, 1881, returns papers and affirms our decision, case of Mariah J. Galliher, Wash'n T'y. Home. 1615. Pierce. Com.'s Dec., vol. 22, p. 64. 2. C, 29189.

62 (4–138.)

Receiver's Duplicate Receipt No. 1615; *Application No.* 1615.

Homestead.

RECEIVER'S OFFICE,
OLYMPIA, W. T., *August 10th*, 1872.

Received of Silas Galliher the sum of sixteen dollars — cents, being the amount of fee and compensation of register and receiver for the entry of lot No. 4, of section 10, in township 20 north, of range 3 east, under the acts of Congress approved May 20, 1862, and March 21, 1864, entitled "An act to secure homesteads to actual settlers on the public domain."

$16. ROBERT G. STUART, *Receiver.*

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the day of entry. An abandonment of the lands for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can at any time after six months pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

(10264—100 M.)

This receipt was found since former application, Nov. 24th, 1880.

63 [Endorsed:] Defendant Mariah J. Galliher'- Exhibit A, embracing following papers, viz: 1 (duplicates), homestead receipt, Silas Galliher; 2, affidavit of Silas Galliher; 3, Mrs. Galliher's homestead application; 4, application, Mariah J. Galliher, to enter tract; 5, non-mineral affidavit, M. J. G.; 6, letter of Sec. of Interior rejecting claim of Mariah J. Galliher.

64 "C."

DEFENDANT GALLIHER'S EXHIBIT B. Filed Feb. 11, 1887. Elwood Evans, Referee.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 20th*, 1884.

Register and receiver, Olympia, W. T.

GENTLEMEN: Referring to your letter of the 6th inst., transmitting

an argument by the attorneys for Mariah J. Galliher in the matter of her application to purchase under the act of June 15, 1880, lot 4, of sec. 10, t'p 20 N., r'ge 3 east, embraced in h'd entry No. 1615, by Silas Galliher, deceased, your attention is called to my decision of April 22d, 1884, in which your action rejecting her application was affirmed and she was advised that F. B. H. Wing purchased said lot December 20, 1881, per cash entry No. 6026, and patent issued to him April 20, 1882.

An adverse right has attached to said lot and she cannot be allowed at this time to purchase the land. See the case of George S. Bishop, Copp's L. O., vol. 9, page 95.

The Secretary's decision of June 1, '81, in the case Galliher (9 C. L. O., 137) was not overruled by the Department until June 3, 1882. See the case of John W. Miller, 9 C. L. O., 57.

Wing purchased lot 4 prior to the Secretary's action overruling the Galliher decision, and the attorneys' argument that under the Miller decision it was the duty of this office to instruct the
65 local officers to allow Mrs. Galliher to purchase the land is not applicable. Silas Galliher's homestead entry was cancelled Dec. 4, 1879.

The tract has been patented to Wing and this office has no further jurisdiction in the premises, and if Mrs. Galliher desires to prosecute the case further she must apply to the local courts.

Very respectfully, N. C. McFARLAND,
Commissioner.

U. S. Land Office, Olympia, W. T.

I hereby certify that the foregoing is a true copy of a letter from the Commissioner of the General Land Office, marked letter "C" and dated June 20th, 1884, rejecting the application of Mariah J. Galliher to purchase the land therein described.

JOHN F. GOWEY,
Register of the Land Office.

66 [Endorsed:] Defendant Galliher'- Exhibit "B." Feb. 2–11, '87. Elwood Evans, referee.

67 Defendant Galliher'- Exhibit C. Filed Feb. 11, '87. Elwood Evans, Referee.

B. J. A. D. S. M. M. C.

Department of the Interior,
General Land Office,
Washington, D. C., *June* 26, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of the testimony of witnesses in the matter of Francis B. H. Wing, timber land entry No. 6026, Olympia, and of his sworn statement and non-mineral affidavit are true and literal exemplifications from the files of this office.

In testimony whereof I have hereunto subscribed my
[L. S.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of General Land Office.

68 (4-537.)

Sworn Statement under Act of June 3, 1878.

LAND OFFICE AT OLYMPIA, W. T., *August* 30, 1881.

I, Francis B. H. Wing, of Pierce county, Washington Territory, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," for the purchase of the lot 4, of section 10, township 20 north, of range 3 east, do solemnly swear that I* am a native-born citizen of the United States, and am over 21 years old; that the said land is unfit for cultivation and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.

FRANCIS B. H. WING.

Sworn to and subscribed before me this 30th day of August, 1881.

J. T. BROWN,
Register of the Land Office.

69 [Endorsed:] Timber lands, act of June 3, 1878. Sworn statement. Land office at Olympia, W. T., sec. 10, township 20 north, range 3 east.

70 (4-062.)

Non-Mineral Affidavit.

COUNTY OF PIERCE, } *ss:*
Terrritory of Washington, }

Francis B. H. Wing, being duly sworn according to law, deposes and says that he is the identical Francis B. H. Wing who is an applicant for Government title to the lot 4, of sec. 10, t'p 20 N., R. 3 E., of the Willamette meridian; that he is well acquainted with the

* In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land as chiefly valuable for timber.

FRANCIS B. H. WING.

Subscribed and sworn to before me this 10th day of December, A. D. 1881; and I hereby certify that the foregoing affidavit was read to the said Francis B. H. Wing previous to his name being subscribed thereto, and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.]

J. H. WILT,
Clerk of the Court.

71 [Endorsed:] Olympia, W. T., non-mineral cash No. 6026.

72 (4–371.)

(The testimony of two witnesses, in this form, taken separately, required in each case.)

Testimony of Witness under Act of June 3, 1878.

MARTIN HALE SMITH, being called as a witness in support of the application of Francis B. H. Wing to purchase the lot 4, of section ten (10), township twenty (20) N., of range three (3) east, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. New Tacoma, and live about three miles and a half southwest of New Tacoma.

Ques. 2. What is your occupation?

Ans. Carpenter.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. I helped survey it yesterday (Dec. 9, 1881).

Ques. 5. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to the said applicant?

Ans. It is not; there are not.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. The nature of the soil.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

Ans. I saw none.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

73 Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the timber that is standing on it and owing to the soil being nothing but a bed of gravel.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

MARTIN HALE SMITH.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this tenth (10th) day of December, 1881.

[SEAL.] J. H. WILT,
Clerk of the Court.

NOTE.—The officer before whom testimony is taken should call the attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Ch. 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and

shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

74 [Endorsed:] Timber lands, act of June 3, 1878. Testimony of witness. Land office at Olympia, W. T. Section 10, township 20 N., range 3 east. Martin Hale Smith.

75 (4-371.)

(The testimony of two witnesses, in this form, taken separately, required in each case.)

Testimony of Witness under Act of June 3, 1878.

A. G. VRADENBURGH, being called as a witness in support of the application of Francis B. H. Wing to purchase the lot (4) four, of section ten (10), township twenty (20) N., of range three (3) east, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. New Tacoma, and reside about four miles out of New Tacoma.

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of it- smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. I was all over it to-day for the purpose of inspecting it.

Ques. 5. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to the said applicant?

Ans. It is not; there are not.

Ques. 6. Is it fit for cultivation?

Ans. Not in my estimation.

Ques. 7. What causes render it unfit for cultivation?

Ans. The nature of the soil is not productive enough for cultivation. It is covered with timber.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. I saw none.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

76 Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the timber on it and the soil being nothing but gravel.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

A. G. VRADENBURGH.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this tenth (10th) day of December, 1881.

[SEAL.]

J. H. WILT,
Clerk of the Court.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Title LXX, Crimes, Ch. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

77 [Endorsed:] Timber lands, act of June 3, 1878. Testimony of witness. Land office at Olympia, W. T., section 10, township 20 N., range 3 east. A. G. Vradenburgh.

78 [Endorsed:] Defendant Galliher's Exhibit C. Elwood Evans, referee. Filed Feb. 11, '87. Filed Jul- 14, 1887. A. Reeves Ayers, clerk, by L. O. Abbott, deputy clerk.

79 EXHIBIT "D," DEFENDANT GALLIHER. Filed Feb. 12, 1887. Elwood Evans, Referee.

DEPARTMENT OF THE INTERIOR.

Before the Hon. Commissioner of the General Land Office.

In Re MARIAH J. GALLIHER, Widow of Silas Galliher, Deceased, Homestead Entry No. 1615,
vs.
FRANCIS B. H. WING and ASSIGNEES *et al.*

To all whom it may concern:

Notice is hereby given that an application for a rehearing and reconsideration in and of the above-entitled cause has been made and is now pending before the honorable Commissioner of the General Land Office, Washington, D. C., and that supplemental proofs have been filed therein affecting the right and interest of Francis B. H. Wing, his assigns, *et al.*, in and to that certain piece and parcel of land situate, lying, and being in the county of Pierce, Washington Territory, being lot No. 4, section 10, T. 20 N., R. 3 E., containing $57\frac{25}{100}$ acres, the same being the former homestead entry No. 1615, dated at the Olympia U. S. land office, August 10, 1872, made by Silas Galliher, and the entry application, No. —, made Nov. 24, 1880, by Mariah J. Galliher, widow of said Silas Galliher.

ROBINSON, PORTER AND ROBINSON,
Attorneys for Mariah J. Galliher.

Olympia, W. T., March 24, 1884.

80 [Endorsed:] Filed Jul- 14, 1887. A. Reeves Ayers, clerk, by L. O. Abbott, deputy clerk.

81 TERRITORY OF WASHINGTON, *County of Pierce,* } ss:

I, W. B. Kelly, auditor in and for Pierce county, W. T., hereby certify that the foregoing instrument of writing is a full, true, and correct copy of an instrument in writing which was filed for record in my office March 27th, 1884, at 9 o'clock a. m., and was recorded at page 130 of volume A of Judgment Records, as now appears from the record thereof in my office.

Witness my hands and official seal this 21st day of February, 1887.

[SEAL.]

W. B. KELLY,
Auditor Pierce Co., W. T.,
By F. H. GLOYD, *Deputy.*

82 [Endorsed:] Exhibit D, Defendant Galliher. Filed Feb. 12, 1887. Elwood Evans, referee.

83 (4–

Township No. —, Range

Description of tract.				Contents.		Rate per acre.		Purchase-money.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.
Lot 1	3	20	3 E.	54					
" 5	"	"	"	4	40				
Lots 3 and 4	"	"	"						
Lot 2	3	"	"	51					
And lots 1 & 8	4								
Lot 10	4	"	"	1	35				
" 11	4	"	"	21	10				
" 9	"	"	"	12	40				
Lots 6 & 7	"	"	"	62	15				
W. ½ of N. E. ¼ & W. ½ of S. E. ¼	5	"	"	167	23				
N. W. ¼ of N. W. ¼	"	"	"						
Lots 1, 5, & 6	"	"	"	2	87				
S. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, & N. E. ¼ of S. W. ¼	"	"	"	160					
N. E. ¼	6	"	"	173	24				
N. W. ¼	"	"	"	163	87				
E. ½ of S. E. ¼	6	"	"	160					
& W. ½ of S. W. ¼	5								
W. ½ of S. E. ¼ & E. ½ of S. W. ¼	6	"	"	160					
Lots 6 & 7	"	"	"	71	04				
S. E. ¼ of S. W. ¼	5	"	"						
S. E. ¼ of S. W. ¼	5	"	"						
Lots 3 and 4	7	"	"						
Lots 3 and 4	"	"	"	72	71				
W. ½ of N. E. ¼ & S. ½ of N. W. ¼	"	"	"	160					
N. E. ¼ of N. W. ¼	"	"	"						
W. ½ of N. E. ¼	"	"	"						
N. E. ¼ of N. W. ¼ & lot 1	"	"	"						
E. ½ of S. E. ¼	"	"	"						
Lot 2 & S. E. ¼ of N. W. ¼	"	"	"						
N. E. ¼	"	"	"						
E. ½ of S. W. ¼ & W. ½ of S. E. ¼	"	"	"	160					
W. ½ of N. E. ¼ & E. ½ of N. W. ¼	8	"	"	160					
E. ½ of N. E. ¼ of	8								
Lot 5	4	"	"	161	44				
Lot 7	5								
Lots 6 & 7	9								
E. ½ of N. E. ¼	7	"	"	160					
W. ½ of N. W. ¼	8								
E. ½ of S. E. ¼	8	"	"	80					
E. ½ of S. W. ¼ & W. ½ of S. E. ¼	"	"	"	160					
W. ½ of S. W. ¼	"			80					
Pts of secs. 3, 4, 9, and	10	"	"	318	59				
Parts of secs. 4 &	5	"	"	321	18				
S. ½ of S. ½	9	"	"	160					
Lots 4 & 5, N. W. ¼ of S. E. ¼ & N. ½ of S. W. ¼	"	"	"	162	52				
Lot 4	10	"	"	57	25				
N. E. ¼ of S. E. ¼ & lot 3	9	"	"	122	52				
N. W. ¼ of S. W. ¼ & lot 5	10								
Lots 2 & 3	"	"	"	37	48				

I hereby certify the above to be a true abstract from the original plats and tract

600.)

No. —, District of —.

Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	Character of entry.	Date of patent.	Where recorded. Volume.	Page.
John Gale	Dec. 6, 1869	2450	Pre. C. E.	Nov. 5, '70	5	93
N. P. R. R. selection	Aug. 27, 1884					
Hd. application of John Gale for additional hd. presented Febr'y 2d, 1886, & refused; appeal filed Feb. 19, '86.						
David Kelly	March 21, 1871	3628	Pre. C. E.	Aug. 1, '72	7	477
John S. Stringham	March 30, 1883	1613	Final homestead.	Dec. 4, '84	4	446
Huston J. Chapman	June 27, 1874	4920	Cash entry	May 1, '74	9	372
Ira Cogswell	Sept. 11, "	4961	Pre. C. E.	April 15, '75	9	451
John Gale	July 8, 1873	4680	Cash entry	Nov. 1, '73	9	160
Milas Galliher	Oct. 27, 1868	1470	Pre. C. E.	Aug. 30, '75	9	480
Job Carr	Aug. 13, 1872	303	Final hd.	Nov. 5, '72	2	92
N. P. R. R. selection.						
Thomas Hood	Sept. 10, 1868	1328	Cash entry	Aug. 20, '69	3	414
David Canfield	" " "	1329	" "	" " "	3	415
William Byrd	Feb'y 15, 1873	4550	" "	June 2, '73	9	30
D. W. C. Davidson	Nov. 17, 1869	2409	" "	Oct. 20, '70	5	25
A. W. Stewart	Sept. 24, 1872	4405	" "	Dec. 5, '72	8	450
George W. Byrd	July 22, 1874	4929	" "	Mar. 1, '75	9	367
Jas. S. Book, Porterfield scrip dec. of Com'r adverse to R. R. Co.	No. 48, app'd Ir.	April 2, 1884; appeal June 20, '84;				
Donald McRae, hd. application, March 21, 1884; appeal June 23, '84; dec. of Com'r adverse to R. R. Co.						
Hd. application of Hugh F. McKay, presen'd Jan. 18, '68, and refused; appeal filed Feb. 23, '86.						
N. P. R. R. selection	August 27, 1884					
James T. Elder	October 6, 1885	9496	Cash entry.			
Add'l hd. app'n of W. J. Libby presented March 17, 1884, & refused; appealed June 23, 1884; appeal to Hon. Secretary from action of Com. allowing Elder's entry Nov. 27, '85.						
Add'l hd. app'n of Edgar Percival, presented March 17, 1884, & refused; appealed June 23, 1884; appeal to Hon. Secretary from action of Com. allowing Elder's entry Nov. 27, '85.						
Add'l hd. app'n of Henry M. C. Seaman, presented June 14, 1883, and refused.						
Add'l hd. app'n of Jacob G. Vote, presented June 15, 1883, and refused.						
Hd. application of Walter S. Bowen, presented March 19, 1881, and refused; appealed June 23, '84.						
D. S. of P. M. Annis, presented and refused April 10, 1884; appealed June 23, '84.						
James N. Junett	Sept. 25, 1882	4444	Hd.			
Rob't Sprowl	June 9, 1875	5100	Pre. C. E.	Dec. 30, '75	10	205
S. S. Hilton	January 5, 1869	1655	Pre. C. E.	Sept. 20, '69	3	423
J. T. Nash	June 28, 1869	2226	Cash entry	May 2, '70	4	354
Walter C. Wallace	July 11, 1874	4926	Pre. C. E.	March 1, '75	9	389
William F. Gibson	Aug. 13, 1870	2811	" "	Oct. 10, '70	8	301
M. M. McCarver	July 8, 1873	4679	" "	Feb. 25, '74	9	249
Don. cert. 564, Nicholas Delin	January 20, 1873		Notification No. 505; settlement March 20, '53.	Feb. 27, '75	3	153
" " 480, Peter Judson	Feb'y 14, 1871		Notification No. 771; settlement Oct. 15, '53; S. ½ of claim to husband and N. ½ of wife Anna.	June 30, '73	3	124
N. P. R. R. selection	August 27, 1884					
John F. Gohlson	May 3, 1869	2068	Pre. C. E.	Aug. 30, 1882	12	129
Francis B. H. Wing	Dec. 20, 1881	6926	Timber C. E.	April 20, '82	11	403
Milas Galliher	May 18, 1869	204	Cash entry	June 1, '70	356	203
Milas Galliher	" " "	2129	" "	Oct. 10, '71	5	142

U. S. LAND OFFICE, OLYMPIA, W. T., *Feb.* 26, 1887.

books on file in this office.

JOHN Y. OSTRANDER, *Register.*

84 Filed Jul- 14, 1887.

A. REEVES AYERS, *Clerk*,
By T. O. ABBOTT, *Deputy Clerk*.

No. 1761.

In the District Court of the Second Judicial District of the Territory of Washington, Holding Terms at Tacoma, in and for Pierce County. In Equity.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, Mariah J. Galliher, Defendants. } No. 1761.

To the Honorable Frank Allyn, judge of the said district court:

Pursuant to an order of this court, made in this suit on the twenty-ninth day of September, 1886, appointing the undersigned referree to take the evidence in the said suit and report the same to this court, I, Elwood Evans, referree as aforesaid, report—

That I have been attended by the attorneys for the several parties who appeared in this action, viz., E. P. Cadwell, Esquire, on behalf of the plaintiff, and John P. Judson, Esquire, and N. S. Porter, Esquire, of the firm of Porter and Robinson, on behalf of the
85 defendant Mariah J. Galliher, and also by Theodore C. Sears, Esquire, Thomas Carroll, Esquire, and John Arthur, Esquire, of counsel for other defendants; and the said parties being present in person or by their attorneys, in accordance with notice of the said meeting to take testimony as aforesaid, on Friday, the eleventh day of February, 1887, at my office, in Tacoma, in said county of Pierce, I proceeded to take the testimony of the witnesses produced by said parties, the said witnesses first having been duly sworn by me according to law.

I further report that all and singular the deeds, plats, and paper-writings of every nature and kind which were produced and offered in evidence by the respective parties are annexed hereto as exhibits and, with the evidence herein contained, embraces all the evidence in the suit by me taken or which was offered before me.

I further report that E. P. Cadwell, Thomas Carroll, Robert Mottan, John A. McGoldrick, Clarence O. Bean, and C. C. Wing were produced and examined before me as witnesses on behalf of the plaintiff, and Mariah J. Galliher, Edgar A. McKoy, Zerelda N. McKoy, Byron Barlow, — Holmes C. Patrick were produced and examined as witnesses on behalf of defendant Mariah J. Galliher in the above-entitled suit, who, having been by me first duly sworn according to law, were then and there examined and interrogated by said E. P. Cadwell, Esquire, of counsel for said plaintiff, and by John P. Judson, Esquire, and Nathan S. Porter, Esquire, of counsel

for said defendant, Mariah J. Galliher, and severally and
86 respectively testified by answers to the questions then and there propounded by said attorneys; which questions and the answers thereto are as follow:

FEBRUARY 11, 1887.

Plaintiff, by her attorney, E. P. Cadwell, introduced in evidence the following deeds and paper-writings, subject to all legal objections as to admissibility and competency, said parties hereby agreeing that exemplifications and certified copies may be introduced instead of and with like effect as the originals; which deeds and papers are as follows—that is to say:

1. Original deed, E. P. Cadwell to A. P. Cadwell, marked Exhibit "A."

2. Original deed, Henry L. Votaw and wife to E. P. Cadwell, marked Exhibit "B."

3. Plat of Votaw's addition to Tacoma, marked Exhibit "C."

4. Certified copy deed, Thomas Carroll and wife to Henry L. Votaw, marked Exhibit "D."

5. Certified copy deed, Albert H. Garrettson and wife to Henry L. Votaw, marked Exhibit "E."

6. Certified copy deed, Thomas Carroll and wife to Henry L. Votaw, marked Exhibit "F."

87 7. Certified copy deed, Thomas Carroll and wife to Albert H. Garrettson, marked Exhibit "G."

8. Certified copy deed, H. L. Votaw and wife to Albert H. Garretson, marked Exhibit "H."

9. Certified copy deed, J. B. Wing and wife and Elizabeth Wing, widow, to Henry L. Votaw and Thomas Carroll, marked Exhibit "I."

10. Certified copy deed, Elizabeth Wing to J. Bently Wing, marked Exhibit "K."

11. Certified copy order of distribution in the estate of F. B. H. Wing, marked Exhibit "L."

12. Certified copy patent United States of America to F. B. H. Wing, marked Exhibit "M."

EDWARD P. CADWELL, being produced and sworn on behalf of the plaintiff, testified as follows to the questions then propounded:

Qn. 1. Where do you reside?

Answer. In Tacoma, Washington Territory.

Qn. 2. Are you acquainted with plaintiff?

Answer. I am.

88 Qn. 3. Do you know the premises described in the complaint in this action?

Answer. I do.

Qn. 4. Who was in possession of them at the commencement of this action?

Answer. The plaintiff, H. P. Cadwell.

Qn. 5. Do you know how long she had been in possession of them prior to the commencement of this action?

Answer. Yes, sir; since the 15th day of October, 1885.

Qn. 6. State, if you know, who had been in possession prior to the last-named time and how long prior thereto.

Answer. I had been in possession since the 17th day of August, 1885, up to the 15th day of October, 1885.

Qn. 7. State, if you know, who had been in possession prior to the 17th day of August, 1885.

Answer. One Henry L. Votaw, and I know of his having been in possession for four months prior to that time.

Qn. 8. When did you first become acquainted with the premises?

Answer. Some time in May, 1885.

Cross-examined by JOHN P. JUDSON, Esquire, of counsel for defendant Mariah J. Galliher:

89 1 Cross-question. Please describe the character of plaintiff's possessions.

Answer. She had a warrantee deed for the property, listed the property for taxation, executed and delivered deeds for sales made of the property or parts of it which were sold prior to — time.

2 Cross-question. What was the character of your possession?

Answer. It was of the same nature.

3 Cross-question. Describe how Henry L. Votaw was in possession of the property.

Answer. He had a warrantee deed for the property, listed the property for taxation, paid taxes on it, and sold parts of the property, — executed deeds therefor.

E. P. CADWELL.

Sworn and described before me this 11th day of February, 1887.

ELWOOD EVANS, *Referee.*

THOMAS CARROLL, produced and sworn on behalf of plaintiff, testified as follows to the questions then propounded:

Question 1. You are one of the defendants in this action, are you?

Answer. Yes, sir.

90 Question 2. What is your occupation?

Answer. Attorney-at-law.

Question 3. State if you know the property described in this action; if so, how long have you known it?

Answer. I know the property; have known it since June, 1883.

Question 4. Who was in possession of the property at the time you name when you first became acquainted with it?

Answer. The possession of the property was at that time delivered to me by the administrator of Dr. F. B. H. Wing, deceased. At that time I was an agent for Mrs. Elizabeth Wing, of Salem, Iowa, with power of attorney. She was the mother and sole heir of Francis B. H. Wing, and I took possession of the property for her and at her request.

Question 5. Do you know in whose possession the property has been from that time up to the 17th August, 1885?

Answer. I think I do. Some little pieces have been sold out, of which I am not certain about.

Question 6. Please state.

Answer. In the fall of 1883, Mr. H. L. Votaw and myself purchased the property from Mrs. Wing and also from J. B. Wing and his wife, who claimed some interest. I think during March and April, 1884, I sold all of my interest in the property to differ-
91 ent parties. Mr. Votaw purchased their interest and cleared off, slashed the timber on the land, and caused the same to be laid off in lots and blocks, and made an addition to the city of Tacoma. Mr. Votaw held the possession himself, with the exception of some lots he had sold, up to the time he sold to Mr. E. P. Cadwell—some time in fall or summer of 1885.

Cross-examined by JOHN P. JUDSON, Esquire, of counsel for Mariah J. Galliher:

Cross-question 1. When you came here as agent for Mrs. Wing did you go upon the land to ascertain its character and value?

Answer. Yes, sir.

Cross-question 2. How much of the land did you examine?

Answer. I examined all of it.

Cross-question 3. Did you at that time find a house upon the land?

Answer. I did not. There was no house on the land.

Cross-question 4. Did you find any clearing done on the land?

Answer. There was several spots over the land where the growth of timber had been very light and fire had gone through and burned it off. There was no appearance whatever of any clearing purposely made.

92 Cross-question 5. Did you find a fence upon that land enclosing a portion of it?

Answer. I found where a cabin had formerly stood and what appeared to have been a fence, but destroyed by the fire mostly. There was some little appearance left. I surveyed the land off—took a surveyor and had it done—so as to establish the lines and know what land I was on. I took two different parties there and tried to sell the land.

Cross-question 6. How much time did you devote to the examination of this land, and how thorough was the examination?

Answer. I was on the land four or five different times during the time I remained here in June, 1883; then, in March, 1884, I was on the land probably a dozen times—pretty near every day, in fact. As above stated, I had the land surveyed by Mr. G. L. Miller. I carried the chain myself and assisted in making the survey. J. Bentley Wing, who was with me at the time, thought of purchasing the land for a nursery, and we examined it together with that view and found it unfit. I took Mr. Hodgson and Mr. Robb on the land to sell them the timber.

Cross-question 7. Could you tell from the indications upon the ground how recently the fire had been there?

Answer. Not certain; I should say not a great while before that.

93 Cross-question 8. Have you any interest in this case, Mr. Carroll?

Answer. I have no interest farther than that at one time having been the owner of part of this land.

Cross-question 9. If Mrs. Galliher should succeed in establishing her claim to this land would you not be injured?

Plaintiff's Objection.

(Plaintiff objected to this question as incompetent and immaterial.)

Answer. That is a legal question that a court would have to determine. I don't think I would be, being an innocent purchaser, never having heard of Mrs. Galliher nor her claim, there being no record of it, there being no *lis pendens* or other notice of her claim until long after I had disposed of all my interest in the property largely by quitclaim deed. I don't think I would be held as a loser or injured. I think my rights would have to be protected.

Cross-question 10. When you discovered the remains of this cabin and fencing destroyed by fire, did you make any inquiry as to who built the cabin or fence?

Pl'ff's Objection.

(Plaintiff's attorney objects as being incompetent and not cross-examination. It is affirmative matter to be offered by defence.)

94 Answer. I did not. I had been told before I had seen the cabin. I was directed to it as one of the means to find the place. I was told by Mr. C. C. Wing that Dr. F. B. H. Wing had some lumbering or piling hauled off the land, and I understood this cabin had been used by these lumbermen as a camp.

Cross-question 11. C. C. Wing, then, gave you this information?

Answer. I won't be positive about that, whether it was C. C. Wing told me or whether he told J. B. Wing, the party who went with me to find the place.

Redirect:

Question 1. How much of this fence had there been, judging from the appearances that you saw?

Answer. Very little. I did not pay much attention to it. It appeared to me like a camp where a rail pen had been built around to secure feed from cattle which were running at large.

Question 2. Did you discover anywhere upon this land any evidences of its having been cultivated or in any manner improved?

Answer. None whatever.

THOMAS CARROLL.

Sworn to and subscribed before me this 11th day of February, 1887.

ELWOOD EVANS, *Referee.*

95 Plaintiff rests.

Maria J. Galliher, by her attorneys, John P. Judson, N. S. Porter, and J. W. Robertson, Esquires, offered in evidence—

Exemplification of record of General Land Office, embracing homestead receiver's receipt given to Silas Galliher in dupplicate for the land described in plaintiff's complaint.

(2.) Affidavit required on the entry of homestead by him.

(3.) His application to enter this land under homestead act.

4. The application of defendant Maria J. Galliher to enter this land under act of June 15th, 1880.

5. Non-mineral affidavit made by her.

6. The decision of Secretary of Interior rejecting her claim, marked Exhibit "A," Defendant Galliher.

Plaintiff's attorney objects to introduction of any evidence by the defendant Mariah J. Galliher on the ground that no affirmative defence is set up by her and plead in her answer in the case at issue. This objection applies to all evidence introduced by said defendant.

Plaintiff further objects to the introduction of the receipt to Silas Galliher of homestead entry fees, because the same is immaterial, incompetent, and not properly authenticated, it being the receipt of the receiver.

96 Plaintiff objects to the non-mineral affidavit of Maria J. Galliher for the same reasons; objects to the introduction of the homestead affidavit for the same reasons; objects to the application to enter the premises described by Silas Galliher for the same reasons, and for the further reason that the same has been cancelled on the 4th December, 1879, as appears by indorsement on same application; objects to the affidavit of Mariah J. Galliher for the same reasons, and objects to the introduction of the letter of A. Bell, as acting Secretary, on the grounds that same is incompetent, immaterial, and not identified as being the letter of A. Bell, acting Secretary, or an authenticated copy of the same.

Plaintiff farther objects to receipt to Silas Galliher, there being no — showing that the original was lost and out of possession of the defendant Maria J. Galliher.

Defendant offers letter of Commissioner of General Land Office, dated June 20th, 1884—"Exhibit B, Defendant Galliher."

2 Exhibit B plaintiff objects that the same is incompetent, immaterial, irrelevant. It does not purport to be the letter of N. C. McFarland, Commissioner, nor is the same identified as a certified copy of this letter of said Commissioner.

97 Defendant Maria J. Galliher offers testimony of witnesses in timber-land entry No. 6026, of Francis B. H. Wing, his sworn statement and non-mineral affidavit, marked "Exhibit C, Defendant Galliher."

Plaintiff objects. Incompetent and irrelevant.

FEB. 12, 1887.

Defendant Maria J. Galliher offers in evidence notice of pendency of the application of Maria J. Galliher for rehearing before the Commissioner of the General Land Office, filed in office of county auditor of Pierce county March 27th, 1884, marked "Exhibit D, Defendant Galliher."

Plaintiff objects on the ground that same is incompetent, immaterial, and irrelevant.

MARIAH J. GALLIHER, one of the defendants herein, and answering to said complaint, sworn upon her own behalf, testified as follows to questions propounded by N. S. PORTER, Esquire, of counsel for said Mariah J. Galliher:

Question 1. You may state your residence, Mrs. Galliher.

Answer. Tacoma.

Question 2. State whether you are the widow of Silas Galliher, deceased.

Answer. I am.

Question 3. When and where were you and Silas Galliher married?

98 (Plaintiff objects—not the best evidence and is incompetent.)

Answer. In Henry county, Iowa.

Question 4. State the date.

Plaintiff objects. Same objection.

Answer. In 1852—May 2d, 1852.

Question 5. State whether or not you received a certificate of said marriage at the time.

Answer. I did.

Question 6. Tell what became of it.

Answer. It was lost crossing the plains.

Question 7. You may state whether your husband ever filed on a homestead claim during his lifetime; and, if so, when and where.

Plaintiff objects. Immaterial and not the best evidence.

Answer. He filed on one in 1872. The filing was made at the land office at Olympia.

Question 8. Now you may state the location of the land, if you can, upon which he filed.

99 Answer. Lot 4, section 10, township 20, 3 east.

Plaintiff moves to strike out the answers to the last three questions on the ground that the same is not made from witness' own knowledge, but is merely reciting what she has in writing, which is now in her own hand and from which she is now reading.

Question 9. State whether your husband, Mr. Galliher, is deceased or not; and, if so, when he died.

Answer. He is deceased. He died in 1873—April 13, 1873.

Question 10. State whether you have married since his death.

Answer. I have not.

Question 11. You may state whether you are the identical Mariah J. Galliher who made application at the land office at Olympia on the 24th day of November, 1880, to purchase the land described by you in your answer to question 8, above written, under the act of June 15th, 1880.

Answer. I am.

Question 11 objected to, and also its answer, as incompetent and immaterial.

Question 12. You may state whether or not you made or caused to be made improvements upon the said homestead; and, if so, you may describe them and give their values.

100 Plaintiff objects on ground of immateriality.

Answer. I made improvements. In the first place, I had a home built; and next place, I had two acres slashed and cleared, a fence built around the two acres, and then I had an addition built onto the house. Then I had more slashing, but cannot now tell how much it was. I should judge I spent $400, in all, upon the place.

Question 13. Now, you may state, Mrs. Galliher, whether you cultivated any portion of that land.

Plaintiff objects. Immaterial.

Answer. Yes, sir; I planted some potatoes there, pease, set out some fruit trees.

Question 14. Now, you may state whether or not your husband, Silas Galliher, performed any labor or made any improvements on said land prior to his death; and, if so, what.

Plaintiff objects. Immaterial.

Answer. He did some slashing there and laid the foundation for a house.

Question 15. State the time he did that work, if you can.

Answer. I cannot exactly. It was in the winter; some time during the winter of 1872.

Question 16. State what you did after his death.

101 Plaintiff objects. Immaterial.

Answer. I went on the claim with my family to live. My family consisted of five children, who were with me. They were all minors.

Question 17. State the manner how your house was furnished.

Answer. I had everything necessary to keep house with—what you would need for keeping house—stove, chairs, two beds and bedding, dishes, etc.

Question 18. You may state whether you continued to reside there or whether you ever moved away with your furniture from that place.

Plaintiff objects. Immaterial.

Answer. I never took my furniture away from there. I continued to reside there.

Cross-examined by E. P. CADWELL, Esq., for plaintiff:

Cross-question 1. You may produce the paper to which you have referred and from which you have made your answers to some or all the questions here asked you, that the same may be attached to this your evidence.

Paper produced and filed, marked "Exhibit E, cross-question 1, Mariah J. Galliher's evidence."

102 Copy.

EXHIBIT "E," Cross-question 1, Mariah J. Galliher's Evidence. Elwood Evans, Referee.

HENRY COUNTY, IOWA.

Married May 2, 1852.
Filed lot 4 in 1872.
Died April 13, 1873.
Over $400.00.

103 Cross-question 2. Is this paper the one from which you made your answers to the first three or four questions?

Answer. Yes, sir; I am poor at remembering dates, and I put some down to better remember them.

Cross-question 3. Did you reside upon this land during the time your husband was living?

Answer. No, sir.

Cross-question 4. How long after his death was it before you commenced to live upon this land?

Answer. About three months.

Cross-question 5. Please give the time when you moved upon the land with your family.

Answer. Some time in July; cannot fix the date more accurately. It was in 1873.

Cross-question 6. How many of your family lived with you on this land?

Answer. There were five during the first year.

Cross-question 7. At what place did your husband die?

Answer. Olympia.

Cross-question 8. Did you have a home there?

Answer. Yes, sir; we had a home there when he died.

104 Cross-question 9. When did you return to Olympia to live?

Answer. I returned there late in the fall.

Cross-question. Did you spend the winter there?

Answer. Not all of it.

Cross-question 10. At what time did you return to this place to reside upon this land, if at all?

Answer. I returned in February.

Cross-question 11. How long did you remain upon the land at this time?

Answer. I was there about six weeks, as near as I remember, at that time.

Cross-question 12. At what point did you move to when you left the land this time?

Answer. I went back to Olympia.

Cross-question 13. You still kept your home at Olympia?

Answer. Well, I had a place where I stopped when I went to Olympia.

Cross-question 14. While at Olympia did you keep house yourself?

Answer. Part of the time I did; some of the time I boarded.

105 Cross-question 15. When you returned to Olympia, in the fall of 1873, and remained until February, 1874, did you keep house?

Answer. Well, yes, sir; while I was there I did.

Cross-question 16. It was in August, 1873, when you returned to Olympia, was it not?

Answer. I did not return in August. I went on the claim in August.

Cross-question 17. Then you were mistaken when you said you went upon the claim in July, 1873, were you?

Answer. It was July when I went upon this claim.

Cross-question 18. It is a very hard matter for you to recollect dates, is it not, Mrs. Galliher?

Answer. Well, it is, of course. I mean to tell the truth, but if I make a little mistake in the dates I cannot help it.

Cross-question 19. Give us the month in which you returned to Olympia?

Answer. Some time—I think the last of October.

Cross-question 20. Where did you go to reside, Mrs. Galliher, after you left Olympia in 1874?

Answer. Well, I went back to the claim.

106 Cross-question 21. What time?

Answer. In the spring and fall I was generally there on the claim. I mean in the spring of 1874 I went back to claim.

Cross-question 22. For how long a time did you continue to keep your home in Olympia?

Answer. I had a home there to go to when I went from my claim—a place to stop. How long I could not just say. I sold my home; then at one time I rented rooms there when I went to Olympia.

Cross-question 23. When you ceased to make Olympia your home you removed to Tacoma and made it your home, did you not?

Answer. I never made Olympia my regular home until 1876.

Cross-question 24. Your husband died in Olympia, did he not?

Answer. Yes, sir.

Cross-question 25. You owned property in Olympia at the time of his death, which was your home, was it not?

Answer. Yes, sir.

Cross-question 26. This property was sold in 1874, was it not?

Answer. I don't remember the year it was sold.

107 Cross-question 27. You made it your homme until it was sold, did you not?

Answer. No, sir; I rented it for four years.

Cross-question 28. At what time did you cease to make it your home in Olympia?

Answer. I really did not make it my home while I had this claim.

Cross-question 29. Your children went to school in Olympia in 1873, 1874, did they not?

Answer. Some of the time in the winter they did—some of them.

Cross-question 30. Did any of them go to school in Tacoma in 1873 or 1874?

Answer. No, sir.

Cross-question 31. You had furniture in Olympia with which to keep house in 1873 and 1874, did you not?

Answer. Yes, sir. I had the furniture in the hotel. I had furniture there to keep house with.

Cross-question 32. And you kept house with this furniture, did you not?

A. While I was there I did.

Cross-question 33. For how many years was the land upon
108 which your husband filed his homestead entry, it being the land here in controversy, cultivated by you?

Answer. From 1873 to 1876.

Cross-question 34. What did you raise in 1873?

Answer. Potatoes and peas are about all that I raised.

Cross-question 35. Did you cultivate them yourself?

Answer. No, sir.

Cross-question 36. Who did?

Answer. My brother.

Cross-question 37. Did your brother do all the work that was done towards cultivating this land?

Answer. No, sir.

Cross-question 38. Who else assisted him?

Answer. My nephew did some of it.

Cross-question 39. Did you yourself or any of your family do any portion of this cultivation between 1873 and 1876?

Answer. No, sir; I hired it done.

Cross-question 40. You say that in 1876 you made your permanent home in Olympia, do you?

Answer. Yes, sir; I did.

109 Cross-question 41. You did not live upon the land at all after 1876?

Answer. No, sir; I did not.

Cross-question 42. What time in 1876 did you begin to make your permanent home in Olympia?

Answer. Well, I cannot tell exact date, but it was in the spring of 1876.

Cross-question 43. During the winter of 1876 was most of your time spent on this place or in Olympia?

Answer. In 1876 I spent in Olympia.

Cross-question 44. During the winter 1875–'6, or that preceding

your making permanent residence in Olympia, was most of your time spent on this place or at Olympia?

Answer. When I went to the place, in February, 1876, I found everything had been taken away, the floor had been taken up, and I had not money to replace it. I spent more time in Olympia than I did on the place, because we had sickness in the family.

Cross-question 45. Your family, all of them, were residing in Olympia during the greater part of the year 1875 and that winter, were they not?

Answer. I was more of the time at Olympia than I was on the claim.

110 Cross-question 46. Is that not the fact, that most of your time was spent at Olympia during each year from 1873 to 1876?

Answer. The first two years I spent more time on the claim than I did at Olympia, but the last two I spent more of my time at Olympia.

Cross-question 47. This morning you stated that you first went on the claim in July or August, 1873; that you left the claim in October and returned to Olympia and remained until in February, and staid for six weeks, then returned to Olympia again. Now you will please state how long it was after you returned to Olympia after this six weeks stay. Was it before you returned to the ranch or to this claim in controversy here?

Answer. As near as I can remember, it was some time in the fall I went onto it again.

Cross-question 48. How long did you remain at this time?

Answer. As near as I can remember, I was there about two months.

Cross-question 49. When were you on the place again after this time?

Answer. Some time during the summer of the next year, I think.

Cross-question 50. How long did you remain there then?

111 Answer. I cannot remember just how long.

Cross-question 51. This was in 1875. Did you return to the claim again before February, 1876; if so, when?

Answer. I was there every spring and fall until 1876. I cannot give the dates.

Cross-question 52. What business had your husband been engaged in prior to his death and was engaged in about the 10th day of August, 1872?

Answer. He was keeping hotel.

Cross-question 53. Was this business continued up to the date of his death, from the time of his entry of the land?

Answer. He had the hotel rented at the time of his death.

Cross-question 54. How long prior to his death was it rented?

Answer. As near as I can remember, I think about six months before he died.

Cross-question 55. Up to that time he had the active management of the hotel himself, did he?

Answer. He was sick a year before he died. I cannot say he had the active management at that time.

Cross-question 55. But he was the proprietor and made his home there, did he not?

112 Answer. Yes, sir.

Cross-question 56. Where was the hotel located?

Answer. In Olympia.

Cross-question 57. Do you know the distance between Olympia and this claim? If so, state how far it is.

Answer. I could not tell the exact number of miles. I do not really know the distance. If I did know I have forgotten.

Cross-question 58. This furniture which was placed in this house was furniture taken from the hotel in Olympia, was it not?

Answer. Yes, sir.

Cross-question 59. Was any portion of it furniture you used in your apartments where you made your home?

Answer. A portion of it was.

Cross-question 60. State what portion.

Answer. The bed and part of the dishes.

Cross-question 61. This house that was built on this land, you may state what kind of a house it was. Give us a description of it.

113 Answer. It was a log house, with what you might call a shake-roof; frame addition built onto it. There were two rooms.

Cross-question 62. Was the house prepared to spend the winter in?

Answer. Yes, sir.

Cross-question 63. But you spent no winter there, as I understand?

Answer. I spent a part of one winter there, in that house.

Cross-question 64. Did you, yourself, ever use any of the vegetables grown upon this place?

Answer. I had some peas off of it.

Cross-question 65. Did you receive any income from this place at any time during the portions of time you spent upon it?

Answer. Not to amount to anything.

Cross-question 66. If you received no income from the place, used none of the products of the place except the few peas, you never made this place your home, did you?

Answer. Yes, sir; I made it my home.

Cross-question 67. The clearing — was done upon this place was done by your brother and nephew, was it not?

Answer. No, sir; not all of it.

114 Cross-question 68. What was done with the timber that was cut from this place?

Answer. I think it was burned up.

Cross-question 69. Was not part of it sold to mills for milling purposes?

Answer. Never sold a stick of it.

Cross-question 70. It may have been sold without your knowledge, might it not?

Answer. I don't know as to that.

Cross-question 71. The furniture that you placed in that house, was it of any great value?

Answer. I should think it was worth about $80.00.

Cross-question 72. Now, you may state of what it consisted.

Answer. It consisted of bedding, stove, dishes, matting, table linen, chairs.

Cross-question 73. The bedding, table linen, and dishes were taken with you as you passed to and from this place and Olympia, were they not?

Answer. No, sir; I left them there.

Cross-question 74. Who occupied the place while you were away?

115 Answer. No one.

Cross-question 75. State, Mrs. Galliher, if the material placed in the fences and house were taken from this land.

Answer. The log house was, as also the rails of the fence.

Cross-question 76. What other articles of improvement were placed upon this claim besides those taken from the land?

Answer. The lumber for the floor and the addition built and the partition.

Cross-question 77. Was this all that was procured off the place from anywhere else?

Answer. I had the house ceiled inside with lumber, and shelving.

Cross-question 78. Is this all the improvements that were made upon the place?

Answer. Besides the improvements of slashing the two acres and the slashing outside.

Cross-question 79. Are the improvements that you have named all the improvements made by you on the place?

Answer. As far as I now remember, I think they are.

Cross-question 80. How much did you pay for the building of the log house and the fence, and to whom was payment made?

116 Answer. The house was built by a man named Gholson. I paid him $75 for just the house without any floor. I paid for building the fence to my brother-in-law. I know I paid him $150 at one time for work.

Cross-question 81. What work did he do that you paid him $150 for?

Answer. They cleared up the two acres—he had two men hired—split the rails which were made, and I think they put up the fence; it seems to me they claimed to have cleared four acres.

Cross-question 82. Is this all the work?

Answer. House was ceiled inside; then the flooring. There was a good many dollars I did not keep any account of.

Cross-question 83. To whom else did you pay any money, and what for?

Answer. There were two young men I paid money to who hauled the lumber from Old Tacoma

Cross-question. 84. How much?

Answer. As near as I can remember, the lumber cost me in the neighborhood of $40, and having it hauled.

Cross-question 85. Anything else you paid out money for?

117 Answer. Yes; I got lumber from the reservation that cost me $15.

Cross-question 86. Go on and state any other expenses.

Answer. There are more than that, if I could only remember. At one time I had the account and it was over $400 I had spent there.

Plaintiff moves to strike out the last sentence, beginning "At one time," &c., as not responsive to the question.

Cross-question 87. Are the items by you enumerated the only items you remember having expended money for?

Answer. I do not remember the exact amount I paid those boys for doing the work. I disremember the exact amount. They were about ten days at the work, as I remember.

Cross-question 88. What variety of fruit trees did you plant on this place?

Answer. I think they were plums and cherries, as well as I can remember now.

Cross-question 89. How many of each kind?

Answer. I cannot remember how many of each kind. I know that I bought seven trees altogether.

Cross-question 90. When did you come to Tacoma to make your home here?

118 Answer. I have been living here four years.

Cross-question 91. You abandoned this claim in the spring of 1876, did you?

Answer. I don't consider that I ever abandoned it.

Cross-question 92. Ceased to make it your home, then, in the spring of 1876, did you?

Answer. Yes, sir; I had to. My money was all gone and I had no way on it to make a living in 1876. I could not support my family if I remained there and I had no money.

Cross-question 93. Was that the reason that you left the place—because you could not make a living on the place?

Answer. I had not enough improvements to make a living; that is the reason that I left the place.

Cross-question 94. Did you acquire some means after leaving the place and before you made the application to purchase the land other than you had at that time; if so, from what source and how much?

Answer. I had none at my command to buy the land with, or rather to improve the land. I got some money but had to pay it out for debts after I had left the land. I got money in 1880 with which to purchase the land. I received it from my husband's estate.

119 Cross-question 95. Was your husband's estate unsettled until 1880?

Answer. I do not remember the exact time that it was settled up.

Cross-question 96. All the means that you had, either for a living or to improve this land or make cash entry of the land, was derived from the estate of your husband, was it?

Answer. Yes, sir.

Cross-question 97. Did you not purchase a home in Olympia in 1876?

Answer. I think it was later; I don't just remember.

Cross-question 98. Then you really did purchase a home at Olympia before making application to purchase this land?

Answer. I don't remember. I don't think I did. I never paid for it. I ran in debt for it.

Cross-question 99. Cannot you name the year in which you purchased the property at Olympia?

Answer. I cannot. I cannot remember dates.

Redirect by N. S. PORTER, Esq., pro def't, Maria J. Galliher:

R. D. question. Mrs. Galliher, where were you born?

120 Answer. In Indiana.

MARIAH JANE GALLIHER.

Sworn to and subscribed before me this twelfth day of February, 1887.

ELWOOD EVANS, *Referree.*

EDGAR A. MCCOY, produced and sworn on the part of the defendant, Maria Jane Galliher, to questions propounded by NATHAN S. PORTER, Esquire, of counsel for said defendant, answered and testified as follows:

Question 1. You- residence?

Answer. Tacoma.

Question 2. You may state whether you are acquainted with lot No. 4, section 10, township 20 north, range 3 east.

Answer. Yes, sir.

Question 3. Now you may state when and how often you have been upon that land.

Plaintiff objects because immaterial.

Answer. I have been on it a great many times since 1879.

Question 4. You may state whether you ever saw any improvements on the same; and, if so, describe them.

Answer. I have seen a one-story log house located in a clearing, with the remains of a fence about—a rail fence on the clearing.

121 Question 5. Fix the *the* date, as near as you can, when you last saw these things.

(Plaintiff objects. Immaterial.)

Answer. In the latter part of June, 1883.

Question 6. You may state, if you know, who made those improvements or caused them to be made.

Plaintiff objects. Immaterial.

Answer. I have understood that they were made by Mr. Galliher.

Plaintiff moves to strike — the answer as hearsay.

Question 7. You may state whether it was not a matter of common notoriety that this land, which you allege to have visited many times, was Mrs. Galliher's claim.

Plaintiff objects. Leading, incompetent, and immaterial.

Answer. Yes, sir.

Question 8. You may state whether or not you know the defendant here, Mrs. Galliher.

Plaintiff objects. Immaterial.

Answer. Yes, sir; I do.

Question 9. You may state whether the Mrs. Galliher here present is the Mrs. Galliher whose claim that was reputed to be.

122 Plaintiff objects. Leading, incompetent, and immaterial.

Answer. Yes, sir; she is.

Question 10. Now, you may state whether or not there was a road across this claim; and, if so, how near these improvements were to that road.

Plaintiff objects. Immaterial.

Answer. There was a road across the claim, and I should judge the improvements were about 150 yards from such road. There was a cross-road, which was sometimes used, passing within about 50 feet of the house.

Question 11. Describe the timber on this land. What kind of timber was it?

Plaintiff objects. Immaterial.

Answer. The timber was poor, very little of it being good for anything but railroad ties.

Cross-examined by JOHN ARTHUR, Esquire, of counsel for plaintiff:

Cross-question 1. State your age.

Answer. Twenty-two.

Cross-question 2. On which side of the improvements was the road that you have spoken of?

Answer. The road that was there when I first saw the place was west of the improvements.

123 Cross-question 3. Do you know whether any of the timber standing on that claim has been used for piling?

Answer. No, sir; I do not.

Cross-question 4. Do you not know that a large quantity of piling was cut upon that place in the years 1882 and 1883?

Answer. I know that piling was cut in that vicinity, but I think it was cut on land further south.

Cross-question 5. Did you know Dr. F. B. H. Wing in his lifetime—I mean the F. B. H. Wing who purchased that claim from the Government?

Defendant Mariah J. Galliher objects because not cross-examination.

Answer. I know Dr. F. B. H. Wing by sight.

Cross-question 6. Did you know of that claim being called after him at any time, "Wing's land" or Wing's timber claim?

Defendant Galliher objects—not cross-examination and irrelevant.

Answer. I have heard that Dr. Wing jumped the Galliher claim and took it as a timber claim.

Cross-question 7. How long ago did you hear that?

Answer. In 1882 or '3.

Cross-question 8. Did you about that time hear or know
124 of a contest for that claim being carried on at the land office at Olympia, to which Dr. Wing and Mrs. Galliher were parties?

Answer. At that time I did not.

Cross-question 9. When did you hear or learn of the contest?

Answer. I cannot state exactly. It may have been any time within the last three or four years.

Defendant Galliher objects, for the same reason as before, to this and preceding questions and their answers.

Cross-question 10. The last time you were on the claim in June, 1883, how far did you go over the place?

Answer. I crossed it from one end to the other.

Cross-question 11. Did you see any cabin on it at that time?

Answer. Yes, sir.

Cross-question 12. Was the cabin that you have referred to or saw at that time the cabin which you considered Galliher's?

Answer. Yes, sir.

Cross-question 13. In what condition was it at that time?

Answer. I never was in the cabin, but from the outside it appeared all right.

125 Cross-question 14. Are you quite sure that in the month of June, 1883, a cabin or house stood upon the land in controversy?

Answer. Yes, sir; I am.

Cross-question 15. Are you as sure of that as you are of any and everything else to which you have testified?

Answer. Yes, sir.

Cross-question 16. Can you name any person whom you heard, between 1879 and June, 1883, call the land in question "Galliher's claim"?

Answer. Yes, sir.

Cross-question 17. Name all whom you have heard so call it.

Answer. I cannot name all, but I can name two—Dr. McCoy, Mr. T. R. Wilson, and I think I have heard M. G. Mann speak of it as the Galliher claim.

Cross-question 18. Dr. McCoy, whom you have mentioned, is your father, is he not?

Answer. Yes, sir.

EDGAR A. McCOY.

Sworn to and subscribed before me this 12th day of February, 1887.

ELWOOD EVANS, *Referee.*

126 ZERELDA N. McCOY, produced and sworn on behalf of the defendant, Maria J. Galliher, to questions propounded by N. S. PORTER, Esquire, of counsel for said defendant, testified as follows:

Question 1. Where do you reside, Mrs. McCoy?

Answer. Near Henderson bay, at the head of Hale's passage, in Pierce county, Washington Territory.

Question 2. You may state whether or not you are acquainted with lot 4, section 10, township 20 N., range 3 east.

Answer. I am.

Question 3. You may state when and how often you have been on the place, from memory.

(Plaintiff objects to question- 2 and 3 as incompetent and immaterial.)

Answer. I have been on the place a great many times since the spring and summer of 1882.

Question 4. Now you may state whether or not you saw any improvements on that place; and, if so, describe them and when you last saw them.

(Plaintiff objects. Incompetent and immaterial.)

Answer. I saw a log house surrounded by a clearing of several acres, on which were the remains of a rail fence. I last saw them in July or August, 1883.

127 Question 5. You may state how or by what name this claim was generally known.

(Plaintiff objects—incompetent and immaterial; and the farther objection that no foundation has been laid showing title by general reputation.)

Answer. It was known by the name of the Galliher claim or Galliher homestead.

Cross-examined by E. P. CADWELL, Esquire, attorney for plaintiff:

Cross-question 1. Where is section 11, township 20 north, range 3 east, in relation to section 10 of same township?

Answer. I do not know.

Cross-question 2. Where is lot 5, in section 10, township 20 north, — 3 east?

Answer. I do not know.

Cross-question 3. Do you know anything about the legal subdivisions of land whatever?

Answer. I know a little.

Cross-question 4. Then would not section 11 be directly south of section 10, in same township?

Answer. I cannot say.

128 Cross-question 5. Where is lot 4, section 10, township 20 north, R. 4 east?

Answer. I am not acquainted with that particular lot.

Cross-question 6. Where is lot 4, section 10, township 20 north, range 3 east?

Answer. If you refer to Mrs. Galliher's claim, I can describe that. I am not a surveyor and not familiar with orders of sections except in some particular locality.

Cross-question 7. Did you not state in answer to the question: "You may state whether or not you are acquainted with lot 4, section 10, township 20 north, range 3 east," that you were acquainted with that particular tract of land, without reference to whether it was Mrs. Galliher's claim or not?

Answer. I said nothing about Mrs. Galliher's claim in that answer. I did so state.

Cross-question 8. Did you ever see lot 4, section 10, township 20 north, range 3 east, at any time prior to the spring of 1882?

Answer. Since 1879 I have passed near the lot frequently and heard it spoken of. I knew the location perfectly, but had not crossed the land until 1882.

129 Cross-question 9. How do you know the location of lot 4, section 10, township 20 north, range 3 east, when you say, in answer to cross-question 5, when the question was asked you; "Where is lot 4, section 10, township 20 north, range 4 east?" "I am not acquainted with that particular lot"?

Answer. I saw the description of land in Dr. Wing's published notice of application to purchase it as timber land, and found, upon inquiry, that it was Mrs. Galliher's claim. I had known of this claim previously to this application from two or three sources. There is a creek flowing into the head of the bay, called Galliher's creek. There is also a saw-mill, an old saw-mill, called Galliher's saw-mill, near the same place. I inquired the reason of these names and learned that they were named from the owner of the mill and the possessor of the homestead on the hill. The owner of the mill and the owner of the claim upon the hill were different parties, but of the same name.

Cross-question 10. All you know about lot 4, section 10, township 20 north, range 3 east, or as to its ownership or location, is what you have learned from other parties who have told you as to its ownership and location, is it not?

Answer. My husband in 1879 and 1880 was looking for land near Tacoma. He was told and I have heard conversation on subject, in which I learned that there was no land south of and near Tacoma

130 which had not been taken. I have had that particular claim pointed out to me as I passed from the Indian reservation to Tacoma. I have not examined the records. I derived my information from several old settlers.

Cross-question 11. Now you may state that if these persons who

had conversations with you or your husband with reference to the land above described lied with reference to the location of this land in controversy you would have been misled and really known nothing about the location of lot 4, section 10, township 20 north, range 3 east, would you?

Answer. I am not in the habit of talking with men who lie, as the attorney so elegantly expresses it. The information I received at that time has been confirmed to me by my own observation. I have seen and known the place many a time. Hundreds of times I have crossed it. If a man lies to me, to quote the attorney, and I believe him, I am misled until I find out the truth. If they lied to me, to quote the attorney, I still would have known the location of the land.

Cross-question 12. When the buildings which you speak of in answer to question 4 were seen by you, do you know of your own personal knowledge that those buildings were situated upon lot 4, in section 10, township 20 north, range 3 east?

Answer. I do.

131 Cross-question 13. You may state how you know that.

Answer. When Dr. Wing's application to purchase the land in question was in the Tacoma paper it was a matter of common conversation that the land belonged to a widow in Olympia, who had a very hard time to maintain her family and keep the claim. My sympathies were aroused by the injustice being done her, and I inquired particularly as to the location of the premises, and, not seeing the house from the Reservation road, I inquired as to the location of the improvements she had put there. I saw the buildings. I did not see them put up. I know by common report that they were Mrs. Galliher's buildings.

Cross-question 14. Do you call this knowing of your own personal knowledge that the buildings were situated upon lot 4, section 10, township 20 north, range 3 east?

Answer. I do.

ZERELDA N. McCOY.

Sworn to and subscribed before me this 14th Feb., 1887.

ELWOOD EVANS, *Referee.*

Plaintiff moves to strike out all of witness' answers to questions 1, 2, 3, 4, 5, on the ground that from witness' own testimony she shows that all her knowledge upon the matters testified to was derived from what some one told her; that she has no personal knowledge as to the location of the land in controversy or the pretended buildings thereon situated, and that the same is hearsay testimony.

132 BYRON BARLOW, being produced and sworn on the part of the defendant, Mariah J. Galliher, to questions propounded by N. S. PORTER, Esquire, attorney of said defendant, testified as follows:

Question 1. State your residence.

Answer. I live in Tacoma, Pierce county.

Question 2. You may state if you are acquainted with lot 4, section 10, township 20 N., R. 3 east, or what is commonly known as the Galliher homestead, near Tacoma.

(Plaintiff objected as immaterial; also assuming that it is commonly called "Galliher homestead.")

Answer. I am.

Question 3. You may state whether or not you saw improvements upon that land; and, if so, you may describe them and tell when you last saw them.

(Plaintiff objects. Immaterial; also for reason that it has not been shown witness ever was on land or knows anything about it.)

Answer. I have seen improvements on the land. I saw a house, a small piece of clearing—should judge an acre or two—and a fence around the clearing in 1874. I am not certain that it was the last time I saw it, but I then saw them. I cannot say certainly whether it was in 1874 or 1875 I last saw them.

133 Question 4. You may state whether or not you are acquainted with the defendant, Mrs. Galliher; and, if so, how long you have known her.

Answer. I am acquainted with her. First became acquainted with her in the winter of 1869 and '70.

Plaintiff moves to strike out above answer because the same is immaterial.

Question 5. State if you know one Silas Galliher; and, if so, how long were you acquainted with him?

Answer. I knew him. I became acquainted with him in the winter of 1869–'70, and knew him from that time till time of his death.

Question 6. Now you may state whether or not he was the reputed husband of this defendant, and whether during the time of your acquaintance with this defendant (Mrs. Galliher) and the said Mrs. Galliher they lived together as husband and wife.

(Plaintiff objects, because the question is incompetent and immaterial.)

Answer. He was reputed her husband and they did live together as man and wife.

(Cross-examination waived.)

B. BARLOW.

134 BYRON BARLOW, recalled by defendant and asked—

Question 7. When you were upon the land in controversy did you ever see Mrs. Galliher residing there; and, if so, how often did you see her there?

Answer. I saw her residing there. I saw her there on several different occasions. I could not state just how often.

(Cross-examination waived.)

B. BARLOW.

Sworn to and subscribed before me this 14th day of February, 1887.

ELWOOD EVANS, *Referee.*

HOLMES C. PATRICK, being produced and sworn on behalf of defendant, Mariah J. Galliher, to questions propounded by JOHN P. JUDSON, Esquire, of counsel for said defendant, testified as follows:

Question 1. State your age and residence.

Answer. My age is 59 years; residence at Tacoma, Pierce county.

Question 2. How long have you lived in Tacoma?

Answer. Seven years on the 16th day of next month (March, 1887).

Question 3. Are you acquainted with the tract of land
135 known as *as* the Widow Galliher's homestead claim, subsequently entered by Dr. Wing under the timber act?

(Plaintiff objects as assuming said tract is or ever was known as the widow Galliher's homestead claim.)

Answer. I was upon that land in April, 1880.

Question 4. You may state the circumstances under which you went upon that land and the purposes for which you went there.

(Pltintiff objects. Immaterial.)

Answer. I had been told that it was vacant, and I went there for the purpose of filing a pre-emption on said tract.

Question 5. Did you file on that tract?

Answer. No, sir.

Question 6. You may state your reasons for not filing upon it.

Plaintiff objects. Immaterial.

Answer. First reason was that it was only a fraction, and I was not favorably impressed with the soil.

Question 7. Did you discover any improvements made upon the land?

Answer. Yes, sir; I found a small log house, a piece of land cleared and fenced; the fence was down at that time—knocked down or torn down.

136 Question 8. About how much of this land was cleared?

(Objected to by plaintiff as immaterial.)

Answer. It is very difficult for me to answer that question accurately. I would judge about an acre, as near as I can remember. I am not positive, however.

Question 9. Had any of this land been cultivated?

(Plaintiff makes same objection.)

Answer. Very difficult to answer that; it looked as if it might have been, though it was then grown up with ferns.

Question 10. Did you at that time know the person who had made those improvements?

Answer. I did not.

Question 11. What was the character of the timber on this land?

(Plaintiff objects as immaterial.)

Answer. The timber was small—the greater portion of it.

(Cross-examination waived.)

H. C. PATRICK.

Sworn to and subscribed before me this 14th day of February, 1887.

ELWOOD EVANS, *Referee.*

JOHN P. JUDSON, Esq., produced and sworn on the part of the defendant, Mariah J. Galliher, to questions propounded by N. S.
137 PORTER Esq., attorney of said defendant, testified as follows:

Question 1. Your residence?

Answer. Tacoma.

Question 2. Are you acquainted with the defendant, Mrs. Galliher, and were you acquainted with Silas Galliher, her late husband? How long were you acquainted? And, if so, — what you know of their having lived together as husband and wife.

(Plaintiff objects. Immaterial, incompetent, not the best evidence.)

Answer. I am acquainted with the defendant, Mariah J. Galliher. I became acquainted with her and Silas Galliher in 1857, and knew them intimately up to the time of his death, and have known her ever since. From the time I first became acquainted with them until the time of his death they lived together as husband and wife. Six months of the time I boarded with them, and have always been very intimate with them. They were always recognized and reputed as husband and wife during the time that I knew them.

(Cross-examination waived.)

JOHN P. JUDSON.

Sworn to and subscribed before me this 14th day of February, 1887.

ELWOOD EVANS, *Referee.*

138 FEBRUARY 21, 1887.

Present: Plaintiff, by her attorney, E. P. Cadwell, Esq., and defendant, Mariah J. Galliher, and her attorney-, John P. Judson, Thomas Carroll, and John Arthur, Esquires.

ELWOOD EVANS, *Referee.*

MARIAH J. GALLIHER, recalled by defendant, Maria J. Galliher, to interrogatories propounded by JOHN P. JUDSON, Esquire, of counsel for said defendant, testified as follows:

Question 1. At the time at which you applied to enter this land who prepared the papers for you with which to make the entry?

Plaintiff objects. Immaterial.

Answer. J. T. Brown, the former register of the Olympia land office. He was the register at the time.

Question 2. What did you do about paying for the land?

(Plaintiff objects. Same objection.)

Answer. I applied to purchase it.

Question 3. What did he say to you about the payment by you of the money?

Plaintiff objects. Immaterial.

Answer. He said that I could not purchase until he sent on — the General Land Office.

139 Question 4. What did he tell you to do with the money?

PLAINTIFF: Same objection.

Answer. He did not tell me anything to do with it.

Question 5. What did he say to you about receiving the money from you at that time?

(PLAINTIFF: Same objection, and also incompetent because hearsay.)

Answer. He said he could not receive it until he applied to the General Land Office at Washington.

(Plaintiff moves to strike out all the testimony of Mariah J. Galliher in answer to questions 1 to 5, inclusive, on the ground that the same is immaterial, incompetent, indefinite as to time; also upon the ground that there has been no evidence yet introduced that Maria J. Galliher at any time offered to enter any land.)

Cross-examination waived.

MARIAH J. GALLIHER.

Sworn to and subscribed before me February 21, 1887.

ELWOOD EVANS, *Referee.*

Maria J. Galliher, defendant, rests.

THOMAS CARROLL, recalled on part of the plaintiff, testified as follows in answer to questions propounded by E. P. CADWELL, Esquire, attorney for plaintiff:

Question 1. Are you acquainted with the land described as lot 4, sec. 10, T. 20 north, R. 3 east?

Answer. I am.

140 Question 2. How long have you been acquainted with the premises?

Answer. Since about the 1st of June, 1883.

Question 3. Are you acquainted with the condition of the premises in 1883, as to improvements thereon? State fully as to the character and condition of all the improvements that were there or having been there.

Answer. I am, in answer to first part of the question. In June 1883, I was on the premises several times; had the land surveyed

There was no improvements whatever on the land. There was what appeared to be the remnants of an old shanty that had rotted and decayed, partly destroyed by fire, around which had grown up a growth of young pine or fir two or three inches in diameter. A few pieces of logs of the shanty, and also the remnants of a rail pen, rotten and decayed, was the only appearance that there ever had been any improvements there or made on the land. There had been apparently a considerable amount of lumber or piling hauled from the land; also a quantity of railroad ties.

Question 4. Are you acquainted with the distance that the land above described is from Olympia? If so, state what that distance is, about.

Answer. I am by reputation. I call it about 40 miles.

Question 5. You may state, if you know, what the value
141 of this land was in the year 1883.

Answer. I can only say that in June, 1883, I offered to sell the land for ten dollars an acre. I was offered but $5 per acre; that was the best offer I could get. I went away about 1st of July, '83, and did not see the land again until March, 1884.

Cross-examination waived.

THOS. CARROLL.

Sworn to and subscribed before me this 21st February, 1887.

ELWOOD EVANS, *Referee.*

ROBERT MOTTAN, produced and sworn on behalf of the plaintiff, to questions propounded by E. P. CADWELL, Esq., on behalf of plaintiff, testified as follows:

Question 1. State your residence, age, and occupation.

Answer. My name is Robert Mottan; I reside at Tacoma, Pierce county, Washington Territory; my age, 40 years; hotel-keeper. I am proprietor of the Villard house.

Question. 2. How long have you been a resident of Tacoma?

Answer. About ten years.

Question. 3. Are you acquainted with the tract of land described as lot 4, section 10, township 20 north, range 3 east, now known as Votaw's addition to the city of Tacoma?

Answer. Yes, sir.

142 Question 4. Were you upon the land in the year 1883?

Answer. Yes, sir.

Question 5. Were there any improvements upon the land at that time?

Answer. No, sir.

Question 6. Was you over the land, so that if there were any improvements at that time you would have seen them?

Answer. Yes, sir; I was over the land—all over it.

Question 7. Do you know the character of the soil of this tract? If so, state what it was.

Answer. Yes, sir; the soil was no good. It was sandy, gravel, rocks all over.

Question 8. What was the cause of your going upon this land in 1883 and examining it?

Answer. Mr. Carroll (pointing to Thos. Carroll, Esq.), the gentleman over there, wanted to sell me some of it.

Question 9. State whether you purchased it; if not, why not.

Answer. I would not have it for anything in them days. It was no good for the purpose I wanted land. I wanted a garden spot. I offered $3.50 per acre. Carroll wanted $5, and I would not give it.

143 Question 10. Were you on this land at any time prior to 1883?

Answer. Yes, sir; before June, 1883, often, when hunting.

Question 11. Did you ever notice a log shanty there?

Answer. Well, I see couple of logs rolled together as if they had been foundation of shanty, rotted down.

Question 12. At any time since your residence in Tacoma, prior to 1883, did you know of any one residing on this land?

Answer. No, sir. I know that Robb had been logging there, but this was after that. I think it was in 1884 he was logging.

Question 13. Do you (know) of any one logging from this land? If so, state who, and when it was done.

Answer. I know of logging from this land by Robb, who used to be a logger here. I cannot tell the time exactly. I believe it was in '82 or '83—make it '82.

Cross-examined by J. P. JUDSON, Esquire, attorney of Maria J. Galliher:

Cross-question 1. Do you know who first entered this land in the land office?

Answer. Yes, sir; Dr. Wing.

144 Cross-question 2. How do you know that Dr. Wing first entered it?

Answer. He told me about it.

Cross-question 3. Where was he living when he first entered this land?

Answer. In the city of Tacoma.

Cross-question 4. How long had he lived in the city of Tacoma before he entered the land?

Plaintiff objects. Immaterial and not cross-examination.

Answer. He must have been here about six months—in Tacoma.

Cross-question 5. Do you know who built the log cabin, the remains of which you found there?

Answer. No, sir.

Cross-question 6. Did you find any land upon the place that had been cleared up at one time?

Answer. No, sir.

Cross-question 7. On what part of the claim was it that you found the remains of the log house?

Answer. It was on the right-hand side of the road as you come up

the hill. It must have been, in my judgment, the northwest corner.

145 Cross-question 8. Do you know where the lines run separating that lot from the rest of the section?

Answer. No; except the way Mr. Carroll then showed me the lines—how they lay and how it runs.

Cross-question 9. Did he take you to the lines and show you how the land laid?

Answer. Yes, sir.

Cross-question 10. You may state where you started in and how you examined the land.

Answer. He went to the stake and showed me how the line runs; I forget now the section and the routes.

Cross-question 11. Was that all the examination that you made of the tract?

Answer. Yes, sir.

Cross-question 12. How do you know that Robb was logging on this land?

Answer. I seen him.

Cross-question 13. Where was he getting the timber from?

Answer. All around; at the same place; all directions; wherever he could get it. He was not particular in them days, I guess.

146 B. MOTTAN.

Sworn to and subscribed before me this 21st February, 1887.

ELWOOD EVANS, *Referee.*

FEB. 22ND, 1887.

Present: Plaintiff, by her attorney, E. P. Cadwell, Esquire; defendant, Mariah J. Galliher, by her attorney, John P. Judson, Esquire, and Thos. Carroll and John Arthur, Esquires, of counsel.

JOHN A. MCGOLDRICK, produced and sworn on behalf of plaintiff, to questions propounded by E. P. CADWELL, Esquire, attorney for plaintiff, testified as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is John A. McGoldrick; age, about 37 years; reside in Tacoma, and am a carpenter.

Question 2. How long have you been a resident of the city of Tacoma?

Ans. I think I came here in 1877.

Question 3. Are you acquainted with that certain tract of land described as lot 4, section 10, township 20 north, range 3 east, now known as Votaw's addition to the city of Tacoma; if so, state how long you have been acquainted with it.

147 Answer. I have been over the ground of what is called Votaw's addition; if I know it, it is southeast of Tacoma; it is about southeast of the old Galliher claim and the Galliher mill. I have been over that ground four or five years ago; maybe before that; it was still grown with timber when I went over it first.

Question 4. When you first went over this tract of land were there any buildings or improvements situated upon the land?

Answer. In travelling over it one day—I was looking for pile timber—I came across the remains of an old log shanty; there appeared to have been a little slashing done around it, and, I think, if I remember aright, the log shanty was pretty well rotted down; a part of the roof was gone; this, I think, was on the tract of land I have spoken of. I do not swear positively without going there to locate, but, to the best of my opinion, it was.

Question 5. What was the condition of the land where this slashing had been done, as to the growth of new timber thereon?

Answer. It appeared as — young growth had grown up there, and that the land had not been cultivated for some time, if it ever was.

Question 6. Are you acquainted with what was known as
148 the "Galliher claim;" if so, where was it situated?

Answer. I always understood that the Galliher mill, so called, was on the "Galliher claim." The Galliher mill is at the head of the bay, and that the Galliher claim was at the head of the bay, I always understood.

Question 7. State the location of the Galliher claim with reference to the Votaw addition.

Answer. The Votaw addition is southeast of the Galliher mill; I should judge a half mile or thereabouts.

Question 8. Were you acquainted with the location of the public road from Tacoma to the Indian reservation of Puyallup at that time? Did you pass over and travel said road?

Answer. Yes, sir.

Question 9. Could you see any portion of this tract of land now known as Votaw's addition or the improvements situated thereon in passing over that road?

Answer. I think not. It would have been impossible to see the building from that road. There was another road that came off of that road and went out towards the prairie. You could see these improvements on that road if you went towards the prairie.

Cross-examined on behalf of Maria J. Galliher, defendant,
149 by her attorney, JOHN P. JUDSON, Esquire:

Cross-question 1. When were you on this land for the first time?

Answer. About four or five years ago, when I was on the land cruising for the timber.

Cross-question 2. Did you learn at any time who built that cabin and slashed that land?

Answer. I did not learn any more than what the Indians told me. I asked them about tie timber. The tie timber that suited me the Indians told me was on the reservation; consequently I never hunted to know who owned the cabin or the improvements.

Cross-question 3. Had the timber been removed from this tract at the time that you speak of?

Answer. It appears to me that it had been logged through part of it—logged or piled; some timber had been cut.

Cross-question 4. Did I understand you to say that you located

the Galliher claim at the head of the bay because the mill there was known as Galliher's mill?

Answer. I always understood that the "Galliher mill" was on the "Galliher claim."

150 Cross-question 5. Have you not, ever since you have been here, heard the Galliher claim spoken of?

Answer. Yes, sir.

J. A. McGOLDRICK.

Sworn to and subscribed before me this 22d day of February, 1887.

ELWOOD EVANS, *Referee.*

Adjourned to Wednesday p. m., 7 o'clock.

FEB. 28.

Met at instance of pl'ff.
No witnesses present.

MARCH 1.

Met at notice of pl'ff.
No witnesses present.

MARCH 2, '87.

Present: E. P. Cadwell, Esq., plaintiff's attorney; Thomas Carroll and John Arthur, Esquires, of counsel, and defendant, Maria J. Galliher, by her attorney-, John P. Judson and N. S. Porter, Esquires; Christopher C. Wing, Clarence O. Bean, and Miron Ward, witnesses.

CLARENCE O. BEAN, being produced and sworn on the part of the plaintiff, to questions propounded by E. P. CADWELL, Esq., on part of plaintiff, testified as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Clarence O. Bean; age, 33 years; reside at Tacoma; occupation, civil engineer.

Question 2. How long have you resided at Tacoma?

Answer. Since 1882.

151 Question 3. What has been your occupation since your residence here?

Answer. Civil engineer.

Question 4. Are you acquainted with that certain tract of land described as lot 4, section 10, township 20 north, R. 3 east, now known as Votaw's addition to the city of Tacoma?

Answer. I am.

Question 5. When did you first become acquainted with this tract of land?

Answer. In 1883.

Question 6. What was the condition of this land at that time, as to improvements thereon?

Answer. There was an old road running across it, unused; a skid road for logging purposes, which was new, and some of the timber had been cut from it. There was also another road crossing it in a southerly direction, which was at that time travelled by the public.

Question 7. Were there any buildings or fences at that time upon the land?

Answer. There were none.

Question 8. What was the character of the soil on that
152 tract of land?

Answer. It was gravelly.

Question 9. Was it good for agricultural purposes?

Answer it would be classed as a very poor quality of agricultural soil.

Question 10. At the time you first saw this tract of land, was there any timber standing on it?

Answer. There was.

Question 11. What was the character of the timber standing on it?

Answer. It was mostly small, with occasionally a large tree; a considerable portion of the timber had been destroyed by fire.

Question 12. Are you acquainted with that certain tract of land known as the Galliher claim?

Answer. I am.

Question 13. Where is the "Galliher claim" situated with relation to the tract known as Votaw's addition?

Answer It joins it on the north and extends farther westward.

Question 14. Witness here shown plat (Exhibit "A," question 14, C. O. Bean's testimony). Will you state, Mr. Bean, whether
153 the situation of the Galliher claim there, with reference to the Votaw addition, as also with reference to its location in the section in which it is situated, is correct?

Answer. It is.

(Here follows diagram marked p. 154.)

Question 15. What tract of land on that plat (same exhibit) represents the Votaw addition to the city of Tacoma?

Answer. F. B. H. Wing; the tract marked and indicated as F. B. H. Wing's.

Question 16. Where was the Galliher mill situated as represented on that plat (same exhibit)?

Answer. On the Delin donation claim, at the head of Commencement bay, at the mouth of the creek flowing into Commencement bay, at its head.

Plaintiff now offers in evidence said plat marked, as aforesaid, "Exhibit A, question 14, C. O. Bean's testimony," admitted by defendants attorneys to be certified in the genuine handwriting of Jno. Y. Ostrander, Esquire, register U. S. district land office, Olympia, W. T.

Question 17. Was there any house situated on the claim known as the "Galliher claim"?

Answer. There was one house, but I could not say whether it was on the Galliher claim or on the extreme southern boundary of the Delin claim.

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v.
Cadwell.
} p. 154

Tp. 20 N.R. 3 East
Puyallup River
Puyallup Indian Reservation
Peter Tudor
Boat
Boat Landing
Portion Camp
St. Delin
Dom.
Mc Collum
Mc Gilvra
Mc Allister
Mc Clellan
Mc Clellan
Mc Clellan

155 Question 18. Are you acquainted with the location of the road over which the public travelled in passing from Tacoma to the Indian reservation?

Answer. I am.

Question 19. Could any portion of the tract of land now known as "Votaw's addition" to the city of Tacoma be seen in passing over this road to and from Tacoma to the Indian reservation?

Answer. There could not.

Question 20. Could this house which you have said was situated on the "Galliher claim" or the extreme southern boundary of the Delin claim be seen in passing over this road to and from Tacoma to the Indian reservation?

Answer. It could.

Cross-examination waived.

CLARENCE O. BEAN.

Sworn to and subscribed before me this March 2, 1887.

ELWOOD EVANS, *Referee.*

CORNELIUS C. WING, being produced and sworn on the part of the plaintiff, being examined by questions propounded by E. P. CADWELL, Esq., testified as follows:

Question 1. State your name, age, residence, and occupation.

156 Answer. Cornelius C. Wing; age, 53 years; reside at Tacoma; occupation, stationary engineer.

Question 2. Are you acquainted with that certain tract of land described as lot 4, section 10, township 20 north, range 3 east, now known as Votaw's addition to the city of Tacoma?

Answer. I am.

Question 3. How long have you been acquainted with it?

Answer. Since 1881.

Question 4. Under what circumstances did you become acquainted with this tract of land?

Answer. I went to look at it; to lay a homestead on it.

Question 5. What was the condition of the claim in reference to improvements and timber standing at the time you went to examine it?

Answer. No improvements whatever; as nice piling as I ever saw grow on the land around the sound here.

Question 6. When was it that you made this examination?

Answer. It was either in the last of February or fore part of March, 1881.

Question 7. Did you see the ruins of any cabin or fences

157 there at that time?

Answer. There was the remains of a cabin, but no fences, on the place.

Question 8. Did you examine as to the character of the soil on this tract of land?

Answer. I did.

Question 9. What was its character?

Answer. Too poor to lay a homestead on; sand and gravel.

Question 10. Do you know what was done with the timber standing on the land after you saw it?

Answer. Either in '82 or '83 a man by the name of Robb told me he was ready to pay for the piling he had cut off of Dr. F. B. H. Wing's timber claim, as he had had the piling all measured and knew just exactly what he had taken from there.

Question 11. Do you know how much piling this Mr. Robb took from this land?

Answer. No, sir.

Question 12. What was the condition of the growth of young timber around this old cabin that you speak of that was situated on this land?

Answer. The fir was growing very thick around it. I had
158 to part it with my hand as I rode in. They were growing very thick around it—some 15 feet high, or about that. They were these slim fir, from 6 to 10 feet high. I do not know that there were any fifteen feet. They were over my head as I rode in on the horse.

Question 13. Do you know how much this Mr. Robb was to pay for the piling which he took from this land?

Answer. I do not.

Cross-examined by JNO. P. JUDSON, Esquire, on behalf of defendant Mariah J. Galliher:

Cross-question 1. If you and the late F. B. H. Wing were related, please state what that relationship was.

Answer. We were brothers.

Cross-question 2. Are you one of the defendants in this case?

Answer. No, sir.

Cross-question 3. Are you the same C. C. Wing who is named in some of the deeds which are in evidence in this case?

Answer. Not that I am aware of.

Cross-question 4. Have you at any time claimed an interest in this tract of land?

Answer. No, sir.

159 (Cross)-question 5. Had your brother filed upon this tract of land at the time that you went to examine it?

Answer. No, sir.

C. C. WING.

Sworn to and subscribed before me this 2nd March, 1887.

ELWOOD EVANS, *Referee.*

Plaintiff now offers in evidence abstract of title, United States land office, Olympia, dated February 26th, 1887, certified by Jno. Y. Ostrander, register, whose signature is admitted to be genuine by defendant's attorneys, certified to be a true abstract from original plats, tract books, on file in his office (Exhibit N, plaintiff.)

Plaintiff now offers in evidence as part of evidence-in-chief certi-

fied copy corrected deed, Elizabeth Wing and others to H. L. Votaw and Thomas Carroll (Exhibit O, plaintiff.)

Also certified copy corrected deed of Thomas Carroll and wife to A. H. Garretson. (See Exhibit "G.")

Plaintiff rests March 4th, 1887.
Defendant rests do. do.

ELWOOD EVANS, *Referee.*

160 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, Elwood Evans, referee appointed by the court to take the testimony in this suit and report the same to the court, do hereby certify that the witnesses who severally gave the within and foregoing evidence were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that said evidence was reduced to writing by me in the presence of the witness who so testified and was carefully read to said witnesses respectively and by such witness subscribed in my presence.

Witness my hand, at Tacoma, in said county and Territory, this March 4th, 1887.

ELWOOD EVANS, *Referee.*

161 In the District Court of the Second Judicial District of the Territory of Washington, Holding Terms at Tacoma, in and for Pierce County.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, H. L. VOTAW, J. B. WING, JANE WING, ELIZABETH WING, MARIAH J. GALLIHER, *et al.*, Defendants.

I, Frank Allyn, judge of the above-entitled court, do hereby certify that the above-entitled cause was tried wholly upon written and documentary evidence, and that the foregoing written and documentary evidence, reported by Elwood Evans, Esquire, referee in this cause, constituted all the said written and documentary evidence upon which said cause was tried before me, and that no other evidence was introduced or considered upon the trial of this cause.

[Seal Dist. Court, Tacoma, Pierce Co.]

FRANK ALLYN,
Judge of the Above Court.

162 [Endorsed:] No. —. In the district court of the second judicial district of the Territory of Washington, holding terms at Tacoma, in and for the county of Pierce. H. P. Cadwell, plaintiff, *vs.* Thos. Carroll and others, defendants. Certificate of judge. Service by receipt of a copy admitted at —— this — day of ——, A. D. 188-. —— ——, attorney for ——. Judson & Sharpstein, attorneys for ——.

163 H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*, Defendants.

I, A. Reeves Ayres, clerk of the district court, holding terms at Tacoma, Pierce county, Washington Territory, do hereby certify that the foregoing is a full, true, and correct transcript on appeal *on* this action, and that it contains so much of the record therein as I am by statute required on appeal to transmit to the supreme court of Washington Territory.

Witness my hand and the seal of said district court this
[SEAL.] 5th day of December, 1887.

A. REEVES AYRES, *Clerk*,
By L. O. ABBOTT, *Deputy Clerk*.

164 [Endorsed:] No. 1761. In the district court, second judicial district of Washington Territory, holding terms at Tacoma. H. P. Cadwell *vs.* Thomas Carroll *et al.* Transcript on appeal. Filed 17th day of December, 1887. R. G. O'Brien, clerk supreme court. E. P. Cadwell, attorney for plaintiff. J. P. Judson & N. S. Porter, attorneys for defendants.

165 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma, in and for Pierce County.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, Mary J. Galliher, Defendants. } Complaint.

To the Honorable John P. Hoyt, judge of the district court, etc.:

Humbly complaining, comes now the above-named plaintiff and, for cause of action against the above-named defendants, state-:

Paragraph 1st.

That she is now and has been for a long time past in the quiet possession and the sole and absolute owner of that certain tract or parcel of land situated and lying in the county of Pierce, Washington Territory, and being more particularly bounded and described as follows, to wit:

All those certain lots or parcels of lots or land situated in the city of Tacoma, said county and Territory, comprising what is
166 now known and designated as Votaw's addition to the said city of Tacoma, as the same is filed and recorded in the office of the auditor of the county of Pierce aforesaid, and being situated and laid out upon lot 4, of section ten (10), in township twenty (20) north, of range three (3) east, of the Willamette meridian, and containing fifty-seven ¼ acres of land.

Paragraph 2nd.

That the said plaintiff claims title to the said premises, and that the said defendants, Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, and Mary J. Galliher, have or pretend to have some claim or estate or interest therein or lien thereon adverse to the said plaintiff.

Paragraph 3rd.

That the claim of said defendants is without any right whatever, and that the said defendants nor either of them have not any estate, right, title, or interest whatever in said land or premises or any part or parcel thereof.

Paragraph 4th.

That said property is not community property; that said property is the separate property of this plaintiff, acquired by gift and purchase with money belonging to this plaintiff in her own right and stead before her marriage, in the years 1879 and 1883.

That said defendant, Henry L. Votaw, nor one E. P. Cadwell have any right, title or interest, or estate in or to any part of said tract of land.

167 Paragraph 5th.

That on the 17th day of November, 1885, the defendant herein, The Merchants' National Bank, commenced a certain suit in this court against one E. P. Cadwell and others, and in said suit sued out a writ of attachment on the same day, and that under and by virtue of said writ of attachment the sheriff of Pierce county, to whom the same was directed, levied the same upon the premises herein described on the 16th day of December, 1885; that in the same suit said defendants did on the 29th day of January, 1886, sue out of this court another writ, and the sheriff of this county did, under and by virtue thereof, on the 4th day of February, 1886, cause the same to be levied on the said premises as the property of the defendant herein, Henry L. Votaw, and said E. P. Cadwell.

Paragraph 6th.

That on the 17th day of November, 1885, the defendant The Merchants' National Bank of Tacoma commenced another suit in this court against said E. P. Cadwell and the defendant herein, Henry L. Votaw; that on the same day the sheriff of said county of Pierce, W. T., to whom the same was directed, levied said writ on the land herein described as the property of said defendant, Henry L. Votaw, and said E. P. Cadwell; that on the 4th day of February, 1886, said defendant caused another writ of attachment to issue in said case, and on the same day the sheriff of Pierce county, to whom the same was directed, levied the same writ
168 on said premises as the property of said defendant, Henry L. Votaw, and said E. P. Cadwell.

Paragraph 7th.

That said attachment remains upon the records of this county as liens against said property.

Paragraph 8th.

That on the 25th day of September, 1884, the defendant Henry L. Votaw and Annie J. Votaw made and entered into a contract of sale of said premises with Jno. T. Baltzell & W. D. Tyler, wherein it was agreed, among other things, that the said Henry L. Votaw should retain the title to said land and make and execute deeds of conveyance whenever requested so to do by the said Tyler and Baltzell; that all the proceeds of said real estate should be applied upon the payment of the purchase price of said land; that on the 17th day of August, 1885, said tract of land was conveyed by warranty deed by said Henry L. Votaw and wife, Annie J. Votaw, to one E. P. Cadwell in trust for this plaintiff; that at the same time said contract was assigned to said E. P. Cadwell in trust for this plaintiff.

That on the 15th day of October said tract of land was conveyed by warranty deed and said contract was assigned in writing to this plaintiff *in personorem* and for the purpose of carrying out the trust above stated as thereinbefore referred; that the plaintiff herein is the sole and absolute owner of said tract of land, subject to said contract, as well as the owner of said contract of purchase as above referred.

169 Paragraph 9th.

That after said levy of said writs of attachments above referred to, which were issued on the 17th day of November, 1885, this plaintiff gave to the defendant The Merchants' National Bank of Tacoma notice in writing of her right in said premises and demanded the release or relinquishment of said levies or any one of them, but, on the contrary, after they were so notified they proceeded to issue writs of attachments in each of said cases and caused the same to be levied upon said property.

Paragraph 10th.

That said levies so made were wrongful and illegal and were made solely for the purpose of annoying this plaintiff and hindering her in the free use and control of her property; that this plaintiff is now suffering irreparable loss and damage in having said cloud upon the title of said land in the failure to sell said land or any part thereof.

Wherefore this plaintiff prays that the defendants may each of them be required to set forth the nature and extent of their respective claims, and that all adverse claims of the defendants or either of them may be determined by a decree of this court; that by said decree it may be declared and adjudged that the defendant- has no estate or interest or claim whatever in or to said land or premises, and that the title of plaintiffs is good and valid.

170 That the defendants be each and all forever barred and enjoined from asserting any claim whatever in or to said land or premises adverse to this plaintiff, and for such other relief as to the court shall seem meet and equitable, agreeable to equity in the premises, and for costs of suit.

E. P. CADWELL,
Attorney for Plaintiff.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, H. P. Cadwell, being duly sworn, say that I am the plaintiff in the above-entitled action; that I have heard the foregoing complaint read; that I know the contents thereof; that the same are true as I verily believe.

H. P. CADWELL.

Sworn to before me and subscribed to in my presence by the said H. P. Cadwell this 1 day of March, 1886.

ALEX. CAMPBELL,
Justice of the Peace.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, R. G. O'Brien, clerk of the district court, holding terms at Tacoma, Pierce county, Washington Territory, do hereby certify that the foregoing is a full, true, and correct copy of the complaint in this action now on file in this office.

Witness my hand and the seal of said district court this
[SEAL.] 20th day of April, 1886.

R. G. O'BRIEN, *Clerk,*
By J. H. WILT, *Deputy Clerk.*

171 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. CADWELL, Plaintiff, *vs.* THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. VOTAW, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, and Mariah J. Galliher, Defendants.	Answer of Mariah J. Galliher.

To the Honorable John P. Hoyt, judge of the above-entitled court:

Comes now the above-named defendant, Mariah J. Galliher, and for answer to complaint*iff*'s complaint she alleges as follows:

I.

She denies each and every allegation contained in the first paragraph of plaintiff's complaint.

II.

She denies each and every allegation contained in the third paragraph of plaintiff's said complaint.

III.

172 Defendant, for answer to paragraphs number four (4), five (5), six (6), seven (7), nine (9) and ten (10) of said complaint, says that she has not sufficient knowledge or information as to the matters therein stated to form a belief, and therefore she denies the same and each and every allegation contained in each and all of said paragraphs.

IV.

Defendant, for answer to paragraph eight (8), admits, upon information and belief, that within the year 1885, Henry L. Votaw and wife made and executed and delivered a warranty deed to E. P. Cadwell, conveying the said tract of land, and that thereafter, in the month of October, in the year 1885, a warranty deed, conveying the said land, was made and executed and delivered to this plaintiff; and denies each and every other allegation in said paragraphs contained, and each and every part and the whole thereof.

V.

And for further answer and defense, and by way of affirmative relief and counter-claim, the defendant alleges:

1. First. That on the — day of ——, A. D. 18—, one Silas Galliher, now deceased, and this defendant were lawfully married, and that thereafter and from thenceforth they lived together as husband and wife until the 18th day of April, A. D. 1873, when said Silas Galliher died intestate.

2. Second. That on the 10th day of August, A. D. 1872, lot four (4), of section ten (10), township twenty (20) north, of 173 range two (2) east, of Willamette meridian, was an unoccupied, surveyed, and platted portion of the public domain of the United States and subject to homestead entry, under and by virtue of the provision of the laws of the United States, at the local U. S. land office at Olympia, W. T.

3. Third. That on the 10th day of August, A. D. 1872, the said Silas Galliher filed, as original entryman, at the United States land office at Olympia, Washington Territory, homestead entry No. 1615, for lot four (4), of section ten (10), in township twenty (20) north, of range three (3) east, of the Willamette meridian, containing fifty-seven and one-quarter (57¼) acres of land, under the acts of Congress approved May 20, 1862, and March 21, 1864, and amendments thereto, entitled "An act to secure homesteads to actual settlers on the public domain," and paid the Government fees and commissions thereon, and that he received a duplicate homestead receiver's receipt therefor and settled upon, improved, cultivated, and resided upon the said tract of land from the date of said entry until the date of his death.

4. Fourth. That after the death of her said husband this defendant remained in the sole, quiet, and peaceable possession of said land, continuing her residence thereon and the cultivation and improvements until about the — day of ——, A. D. 18—.

5. Fifth. That by and through mistake she neglected to make final proof on said homestead entry within the time pre-
174 scribed by law, though she continued in possession of said land, and that on the 24th day of November, A. D. 1880, this defendant made application at the United States land office at Olympia, Washington Territory, to purchase said tract of land, under the second section of the act of Congress approved June 15th, 1880, entitled "An act relating to the public land of the United States," as the widow and heir of said Silas Galliher and on behalf of the heirs of said Silas Galliher, there being then and there no adverse claims thereto, and did then and there tender the purchase price, in gold coin of the United States, for the said land as aforesaid embraced in her deceased husband's homestead entry, together with the proofs and evidence of witnesses, as required by instructions of the Commissioner of the General Land Office under said act and by said act of Congress; that the said application was rejected by the register and receiver of the said land office at Olympia, and that the defendant took an appeal from the said decision so rejecting her application to purchase to the Commissioners of the General Land Office, who, through mistake as to the construction of the laws applicable to the case, sustained the decision of the register and receiver, and that thereupon defendant appealed said cause to the Secretary of the Interior, who, through mistake of the law, wrongfully sustained the decision of the Commissioner of the General Land Office.

6. Sixth. That after the defendant had so as aforesaid applied to purchase said land and during the time her said application
175 was pending in the General Land Office, before the Commissioner and the Secretary of the Interior, one Francis B. H. Wing made application to enter said tract of land under the act of Congress entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," approved June 3, 1878, as timber lands, and did make and perfect final proof thereon the 20th day of December, A. D. 1881, per cash entry No. 8026, and that a patent therefor was issued to said Wing, dated the 20th day of April, A. D. 1882.

7. Seventh. That the said Wing falsely and fraudulently made the statement under oath, when he applied to enter said land, that the said land "is unfit for *the* cultivation and valuable chiefly for its timber; that it is uninhabited and contains no improvements;" that these facts must appear in the "sworn statement," under the said act of June 3d, 1878, before title to any land can be acquired under said act; that at the time said statement was made said land was inhabited, and it then was and now is fit for cultivation, and contained improvements, and that by reason of said false statements and fraud, as practiced upon the Government, the said Wing so as aforesaid acquired said patent to said land.

8. Eighth. That on the 25th day of September, A. D. 1884, and long prior thereto and ever since, the said John F. Baltzell, W. D. Tyler, Henry L. Votaw, and Annie J. Votaw knew of the equity of the defendant and of her claims in and to said tract of land,
176 and that on the seventeenth day of August, 1885, and long prior thereto and ever since, the said E. P. Cadwell and this plaintiff knew and had notice of the equities of the defendant and of her right and claim and that of the heirs in and to the land in the complaint described.

9. Ninth. That the pretended conveyances from the said Wing and his wife and heirs, the said Henry L. Votaw and his wife, and the said E. P. Cadwell to this plaintiff, covering this land, were made with full knowledge of this defendant's rights, equities, and claims of, in, and to said tract of land and without any consideration therefor and for the purpose of defeating and defrauding this defendant out of the same, and that the value of said land is — thousand dollars.

10. Tenth. That defendant herewith brings into court the sum of $143.13 *dollars*, the amount of money paid by the said Wing to the U. S. Government for said tract of land, and now pays the same into the registry of this court, to be paid to the party or parties entitled thereto by orde- of the court.

Wherefore the defendant prays as follows, to wit:

1st. That plaintiff may be decreed to hold the title to this land in trust for this defendant and the heirs of Silas Galliher.

2nd. That the said defendant, Maria J. Galliher, & the heirs
177 of Silas Galliher, deceased, be declared to be the equitable owners of said land, to wit:

Lot four (4), of section ten (10), in township twenty (20) north, of range two (2) east, of Willamette meridian, and that plaintiff convey the same to this defendant by a good and sufficient deed by a day to be fixed, and in default thereof said lands to be conveyed by a commissioner appointed by the court.

3d. For such other and further relief as is equitable.

4th. For costs and disbursements.

NATHAN S. PORTER,
J. MUNROE ROBINSON,
JOSEPH W. ROBINSON,
JOHN P. JUDSON,
Attorneys for Defendant Mariah J. Galliher.

178 [Endorsed:] In the district court, holding terms at Tacoma, W. T. H. P. Cadwell, plaintiff, *vs.* Thomas Carroll *et al.*, defendants. Copy. Answer. Porter & Robinson, J. W. Robinson, and J. P. Judson, attorneys for defendant Mariah J. Galliher.

179 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. VOTAW, ANNIE J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, and Mariah J. Galliher, Defendants.

Comes now the above-named plaintiff and for reply to the answer of Mariah J. Galliher states:

First. That she denies each and every allegations made and contained in paragraphs three, four, five, seven, eight, nine, and ten of that part of defendant's answer in which she states facts constituting a cause for affirmative relief.

Second. That as to whether or not the statements made and contained in paragraphs first, second, of that part of defendant's answer in which she stated facts constituting a cause for affirmative relief, this plaintiff has not knowledge or information sufficient to form a belief, and hence denies the same.

Plaintiff further states that for other and complete defense to the affirmative matter set up in defendant's answer that on the
180 10th day of August, 1872, one Silas Galliher made a pretended homestead entry upon lot four (4), situated in section ten (10), township twenty north, range three (3) east; that on the 4th day of December, 1879, said homestead entry was cancelled by the United States *law* officers at Olympia, W. T., having charge of the land department in which the above tract of land was situated, after giving due and legal notice to said defendant of their intention so to cancel said pretended homestead entry before such entry was cancelled.

That said defendant had abandoned said land long prior to the said cancellation, and has not been in possession of said land or any part thereof at any time or portion of time since long prior to said cancellation, to wit, since on or about June 25, 1874.

That long after said abandonment and cancellation of said homestead entry this defendant made application to the register and receiver of the U. S. land office at Olympia to purchase said tract of land; that said application was denied on the ground that this defendant did not come within the provision of the second section of the act of June 15th, 1880, she having no existing homestead right, the homestead right under which she claimed having been long since cancelled, and on the ground that she had abandoned the land and was not in possession of the same; that upon appeal the General Land Commissioner, at Washington, D. C., affirmed said ruling and decision so made; that upon appeal to the Secretary of the
181 Interior the said Secretary affirmed said ruling and decision and disallowed said application; that in so affirming said decision he said:

"I have considered the appeal of Mariah J. Galliher, widow of Silas Galliher, deceased, from your decision of December 14th, 1880,

rejecting her application to purchase, under the second section of the act of June 15th, 1880, lot No. 4, section 10, t'w'p 20 N., R. 3 E., Olympia, W. T.

It appears that this tract was embraced in the homestead entry of said Silas Galliher, made August 10th, 1872. Mr. Galliher died April 18th, 1873, and his entry was cancelled December 4, 1879, for want of final proof within the statutory period of seven years, after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no claim thereto until November 23, 1880, the date of her present application.

The second section of the act of June 15, 1880, provides 'that persons who have heretofore, under any of the homestead laws, entered lands properly subject to such entry * * * may entitle themselves to such lands by paying the Government price therefor.' * * *

The purchase herein provided is in substitution of the continued settlement and cultivation of five years required by the homestead laws and relates to existing homestead rights. Even the husband of Mrs. Galliher, if living, would have no right of purchase
182 under said act, because his entry has been cancelled, and he would be a stranger to the land and to the record, and with no greater right thereto during the continuance of such cancellation than any other person. His widow can have no better right than he.

It is not necessary to consider whether Mrs. Galliher may now make private entry of the tract under other laws; but, clearly, in my opinion, under that of June 15, 1880, she has no right of purchase. Your decision is affirmed."

That this plaintiff and her grantor, E. P. Cadwell, and the previous owners of this land, to wit, H. D. Thomas, W. D. Tyler, and John T. Baltzell, Henry L. Votaw, and Annie J. Votaw, knew of said decision and relied thereon, and that, knowing and relying upon said decision and finding of said Land Department, they have expended large amounts of money in improving and l-ying out said land in city lots, and have built valuable buildings and constructions thereon and have caused others so to do, and have made large and valuable improvements thereon, so that said land has been increased in value in at least the sum of twenty thousand dollars.

183 Wherefore this plaintiff prays judgment as heretofore prayed in her complaint.

E. P. CADWELL,
Att'y for Pl'ff.

TERRITORY OF WASHINGTON, }
County of Pierce. }

I, H. P. Cadwell, being duly sworn, says that I am the plaintiff named in the foregoing reply; that I know the facts therein stated; that they are true as I verily believe.

H. P. CADWELL.

Sworn to before me and subscribed to in my presence by the said H. P. Cadwell July 28, 1886.

A. CAMPBELL,
Justice of the Peace.

184 [Endorsed:] In the district court, second judicial district, holding terms at Tacoma. H. P. Cadwell, plaintiff, *vs.* Thomas Carroll *et al.*, defendants. Copy. Reply.

185 H. P. CADWELL
vs.
THOMAS CARROLL.

It is hereby ordered that the referee heretofore appointed in this cause report the testimony to the court during the present term.

[Endorsed:] H. P. Cadwell *vs.* Thomas Carroll. Order.

186 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, J. B. WING, JANE WING, ELIZABETH WING, MARIAH J. GALLIHER, *et al.*, Defendants.

Comes now the defendant Mariah J. Galliher, by her attorneys, John P. Judson and N. S. Porter, and move the court to set aside the findings of fact, the conclusions of law, and the decree filed in this cause and to grant her a new trial upon the following grounds:

First. Because the court erred in finding that Silas Galliher, the late husband of defendant, made a pretended homestead entry of the land described in the complaint.

Second. The court erred in finding that said entry of Silas Galliher was not made in good faith with the intention of making it his home and the home of his family.

Third. The court erred in finding that the residence of this defendant upon said land was only temporary, and that it did not exceed thirty weeks altogether, and that her home was during this time in Olympia.

187 Fourth. The court erred in finding that defendant in February, 1876, wilfully and intentionally abandoned said land, and that she has never since been upon said land.

Fifth. The court erred in finding that defendant has not been in possession of said land; that she was not seized in fee of said land within ten years from the filing of her answer herein.

Sixth. The court erred in finding that neither the plaintiff, H. P. Cadwell, nor her grantor, E. P. Cadwell, nor the defendants, Henry L. Votaw, Thomas Carroll, Annie J. Carroll, J. B. Wing, Jane Wing, Elizabeth Wing, nor B. H. Wing had any notice, either actual or constructive, whatever of the defendant's claim to said land and the right to purchase the same.

Seventh. The court erred in finding that defendant was not ready and willing to pay into court any and all monies so expended by Francis H. B. Wing in purchasing said land from the Government.

Eighth. The court erred in finding that said land is unfit for agricultural purposes.

Ninth. The court erred in finding that defendant Mariah J. Galliher is not entitled to be declared the *cestui que trust.* of plaintiff herein.

And the court erred in not finding—

I. That Silas Galliher, the deceased husband of defendant Mariah J. Galliher filed upon the land described in the complaint under the homestead laws of the United States August 10th,
188 1872, and that he was then and there a citizen of the United States over the age of twenty-one years and the head of a family.

II. The court erred in not finding that said Silas Galliher immediately after making his said filing entered upon said land and commenced the erection of a house thereon by building the foundation and clearing some of the land.

III. The court erred in not finding that upon the death of said Silas Galliher defendant herein moved upon said land with her family of six minor children and expended four hundred dollars in the erection of a house, clearing the land, fencing and planting the same.

IV. The court erred in not finding that defendant was in the undisputed possession of said land until February, 1876, when her house was broken open, the furniture stolen, and that she had not then sufficient means to make said house comfortable for herself and family.

V. The court erred in not finding that her improvements so as aforesaid made by her upon said land were visable, apparent, and notorious up to May, 1883, when the buildings and fences were destroyed by fire.

VI. The court erred in not finding that on the 24th day of November, 1880, that there was no adverse claim to said land or any part thereof, and that defendant on said day, in the manner and form provided by law, applied to purchase said land at the United States land office at Olympia, and that she then and there
189 tendered the price of said land to the register of said land office, under the second section of the act of Congress approved June 15, 1880, entitled "An act in relation to the public lands of the United States."

VII. The court erred in not finding that the Commissioner of the General Land Office refused to allow her application to purchase said land upon the sole ground that the homestead entry of her late husband had been cancelled by the department in 1879 and before she filed her said application; that she took an appeal from said decision, and that pending said appeal Francis H. B. Wing was allowed to enter said land under the timber act.

VIII. The court erred in not finding as a matter of law that defendant Mariah J. Galliher is the equitable owner of said land by

virtue of her application to purchase the same under said act of Congress of June 15th, 1880, and that plaintiff holds the bare legal title in trust for her, and that she should convey said title to this defendant.

JOHN P. JUDSON AND
N. S. PORTER,
Attorneys for said Defendant.

190 [Endorsed:] No. 1761. In the district court of the second judicial district of the Territory of Washington, holding terms at ——, in and for the county of ——. H. P. Cadwell, plaintiff, *vs.* Thomas Carroll *et al*, defendant-. Motion for new trial. Filed Aug. 1, 1887. A. Reeves Ayers, clerk, by T. O. Abott, deputy clerk.

191 H. P. CADWELL
vs.
THOMAS CARROLL *et al.*

And now, on this day, this cause comes on for hearing; whereupon the report of the referee herein is submitted to the court for inspection, and it is ordered that this cause be continued until tomorrow morning.

[Endorsed:] Cadwell *vs.* Carroll *et al.*

192 H. P. CADWELL
vs.
THOMAS CARROLL *et al.*

This cause coming on to be heard this day, defendant Galliher, by her attorneys, John P. Judson and Nathan S. Porter, Esqs., demand- of the plaintiff for whom T. C. Sears, Esq., appears as attorney, and now it is ordered that the said T. C. Sears state for whom he appears; whereupon he states that he appears for plaintiff, H. P. Cadwell.

And now defendent Galliher moves that the said T. C. Sears be not allowed to so appear on the ground that he appeared for defendants on the trial before the referee; and the court, being fully advised in the premises, overrules said motion; to which ruling said defendant Galliher excepts; which exception is allowed.

And now this cause is taken under advisement.

193 In the District Court of the Second Judicial District, Holding Terms at Tacoma.

H. P. CADWELL
vs.
MARIA J. GALLIHER. } Opinion of Court.

About March 1st, 1886, plaintiff filed her petition showing that she was in possession of a certain body of land in Pierce county and claiming to be the absolute and unqualified owner of same;

that defendant made some claim therein, and asked to have her title quieted.

In July, 1886, defendant filed her answer, denying plaintiff's title and alleging title in herself by virtue of an "original entry" on said land by her husband, Silas Galliher, about August 10th, 1872.

To this plaintiff replied, putting in issue the legal effect of said entry of Galliher.

The following facts are admitted: That plaintiff is in possession and has been, through her grantors, under a patent originally issued to Francis B. H. Wing April 20th, 1882, upon its application of August 30th, 1881; that Silas Galliher, on August 10th, 1872, filed an original entry on this land and soon after died; that his widow, Maria J. Galliher, built a small house and lived there irregularly, off and on, from 1873 until 1875. The Galliher entry was
194 cancelled December 4th, 1879. She thereupon applied to purchase the land, which application was rejected December 14th, 1880, and approved by the department June 1st, 1881, in an order as follows: "It appears that this tract was embraced in the homestead entry of Silas Galliher, made August 10th, 1872. Mr. Galliher died April 18, 1873, and his entry was cancelled December 14, 1879, for want of final proof within the statutory period of 7 years after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no claim thereto until November 23, 1880, the date of her present application."

The foregoing facts are conceded. "It is claimed by defendants that she never abandoned this land, and that because of this claim and, further, because the department have in later ruling, made since issuing this patent to Wing, said the ruling should have been different in her case, that she is now entitled to be decreed the property. She admits that when she went to this place from Olympia, in the spring of 1876, she found her house destroyed and was unable to stay there and returned to Olympia, and that sickness and death in her family rendered it impossible for her to return to the land until the seven years had expired." (Brief of N. S. Porter, for M. J. Galliher.)

From Mrs. Galliher's own testimony it is clear she went upon this land about August, 1873, remained until October, returned
195 to Olympia until February, then returned to this land in the fall for a few weeks, and again the following summer a short time, then back to Olympia, and then her last visit, in February, 1876, when she found the house wrecked and never went back. At best, from her testimony, she made flying visits to this land of a few weeks only each spring and fall through a little over two years, having her home all the time at Olympia.

On the other hand, Wing, so far as the evidence discloses, went at once into possession, and has from that day to this held uninterrupted possession, by himself or his successive grantees, under the patent issued him by the Government in 1882.

The attorneys for the defendant claim that even if she did aban-

don this land, still she has a right existing by virtue of the original entry. This cannot be. Such a holding would leave all titles at the mercy of "floating claims" of prior entry and bring about disastrous confusion. That Mrs. Galliher did in fact abandon this land and intend to do so is patent from the evidence to any disinterested reader. Whether she did this through force of circumstances, as claimed by counsel, or from her own pleasure is not a controlling question. The intent to abandon is clear, and that is the controlling factor.

It is argued, and with considerable ingenuity, that under the act of 1880, by virtue of the original entry, she may after the
196 seven years, if no adverse interest has attached, still perfect it regardless of errors, irregularities, etc. This may be true in the case cited, but in this case to follow that rule we must ignore the abandonment entirely, as defendant's attorneys seem to do. The fact of abandonment being clear, as I believe, from the evidence, we can't apply the act of 1880 to do defendant any good, for with abandonment the right on which to base her claim vanished. She must have a claim or right existing, and this had gone through abandonment.

If the evidence in this case was less shadowy to support defendant's claim and the facts of abandonment less convincing, there still remains the fact that, though Mrs. Galliher seems to have pursued her claim with reasonable alacrity through the land office, she then stopped, and, although Wing secured a patent in 1882 on application made in 1881 and his successive grantees have since been in possession and disposing of this land, Mr-. Galliher makes no sign of a claim. In fact, years pass and this property increases in value. Still she makes no claim, and even now she is in court as a claimant because brought in by the plaintiff. Her cross-action, with her answer, is filed July, 1886, more than five years after a patent has issued to Wing and more than ten years after she was last upon this land with any intent of remaining, from her own testimony. Had she brought suit promptly or had she brought a suit at all, her claim
would have a better light about it; but this property was of
197 little value at the time she abandoned it and apparently not worth the trouble. Afterwards it becomes valuable, and yet she does nothing (knowing she had abandoned it). At length, when plaintiff for some reason serves her with notice, she then and not till then seems to imagine her claim to have revived. If on such a state of facts defendant's claim could be maintained against plaintiff's patent, there would be no security whatever in titles. There —, perhaps, few tracts of land over which some floating "original entry" might not be found to vex innocent parties. Had this property not become valuable, this claim of defendant's would never have been heard of, which must impress itself as — important fact in this case.

I find no equity in the claim asserted by defendant Maria Galliher, and decree will go for plaintiff, as prayed, with costs.

July 28th, '87.

FRANK ALLYN, *Judge.*

198 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*, Defendants.

Comes now the defendant Mariah J. Galliher, one of the defendants in the above-entitled cause, and moves the court to set aside the findings of fact and the judgment and decree filed herein and to grant her a new trial for the following reasons:

That said findings of facts and neither of them are sustained by the evidence;

The judgment and decree cannot be sustained on the facts found;

And because it appears from the facts found that the said defendant Mariah J. Galliher has the equitable title to the land described in the complaint and that she is entitled to a conveyance of said land from the plaintiff herein.

N. S. PORTER,
JOHN P. JUDSON,
Attorneys for Defendant Mariah J. Galliher.

Filed Oct. 7, 1887.

A. REEVES AYERS, *Clerk*,
By T. O. ABBOTT,
Deputy Clerk.

199 H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*

This cause coming on to be heard upon the motion of Mariah J. Galliher, one of the defendants herein, to set aside the findings of fact filed herein, E. P. Cadwell and Theo. C. Sears appearing for plaintiff and N. S. Porter and John P. Judson appearing for said defendant, and after argument of counsel, the court, being fully advised in the premises, sustains said motion in part and directs that findings in accordance with the opinion of the court filed herein be submitted for filing; to which ruling of the court said defendant, by her counsel, excepts.

FRANK ALLYN, *Judge.*

200 H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.* No. 1761.

This cause coming on to be heard upon the motion of Mariah J. Galliher to set aside the findings of fact, the judgment, and decree filed herein and for a new trial, E. P. Cadwell and Theo. C. Sears appearing for plaintiff and John P. Judson appearing for said defendant, and the court, being fully advised in the premises, overrules said motion; to which ruling said defendant excepts.

Exceptions allowed.

FRANK ALLYN, *Judge.*

201 In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma, in and for Pierce County.

HANNAH P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*

This cause having been regularly called for trial on the 15th day of July, 1887, it still being of the regular June term of this court, and the plaintiff appearing by her attorney-, E. P. Cadwell and T. C. Sears, and the defendant Mariah J. Galliher by her attorney-, John P. Judson and Nathan S. Porter, and the evidence being introduced to support the issues of the plaintiff and defendant, and the argument of counsel being heard, and the court, being unable at this time to render a final decision in this cause and taking the matter under advisement and on the 28th day of July being fully advised in the premises as to the question of facts herein in controversy and the conclusions of law upon said finding of facts, finds as follows — the following findings of fact:

That on or about March 1st, 1886, plaintiff herein filed her petition, showing that she was in possession of a certain parcel of land, to wit, lot four (4), situated in section ten, township twenty north, of range three east, in Pierce county, W. T., and claiming to be the absolute owner thereof; that defendant Mariah J. Galliher
202 made some claim thereto and asked to have her title quieted.

In July, 1886, defendant Mariah J. Galliher filed her answer — of an original entry on said land by her husband, Silas Galliher, about August 10th, 1872.

To this plaintiff replied, putting in issue the legal effects of said entry of said Galliher.

That plaintiff is in possession of said premises and has been through her grantors under patent originally issued to Francis B. H. Wing April 20th, 1882, upon his application of August 30th, 1881.

That Silas Galliher, on August 10th, 1872, filed an original entry on this land and soon after died.

That his widow, this defendant, built a small house on said land and lived there irregularly, off and on, from 1873 to 1875.

That the Galliher entry was cancelled by the land department, in Olympia, W. T., December 4, 1879.

That she thereupon applied to purchase said land; which application was rejected December 14th, 1880, and approved by the Secretary of the Interior June 1st, 1881, in an order in words as follows:

"It appears that this tract of land was embraced in the homestead entry of Silas Galliher, made August 10th, 1872. Mr. Galliher died April 18th, 1873, and his entry was cancelled December 14th, 1879, for want of final proof within the statutory period of seven years after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised
203 Statutes. This she failed to do, but abandoned the land,

making no legal claim thereto until November 23, 1880, the date of her present application."

That the defendant Mariah J. Galliher first went upon said land in August, 1873, and made flying visits thereto each spring and fall during the years 1873, 1874, and 1875 and was not in all upon said land to exceed thirty weeks; that her home in the meantime was in Olympia.

That the defendant Francis B. H. Wing went at once into possession of said land and has ever since continuously by himself and his successors held uninterrupted possession of said land since said patent issued to him by the Government, in 1882.

That the defendant Mariah J. Galliher wilfully and with full intent to do so abandoned said land in February, 1876, and has not since been upon said land or made any claim thereto, to the title, or to the possession thereof until brought into court by this plaintiff in this suit.

That the defendant Mariah J. Galliher has taken no legal steps to assert her claim to said land since the rejection of said claim by the Government, although more than four years after a patent has issued for said land and more than ten years since she was last upon said land with any intent of remaining, and that she now makes no claim until brought into court by this plaintiff.

That at the time she abandoned said land it was of little value; that when she makes her claim now it has appreciated much in value.

204 As a conclusion of law, from the foregoing facts I find that there is no equity in defendant Mariah J. Galliher's claim; that she had no existing right in said land when she applied to purchase the same from the Government.

Therefore, by virtue of the law and by reason of the premises aforesaid, it is hereby—

Ordered, adjudged, and decreed that the plaintiff have judgment or decree as prayed for in her complaint herein against this defendant; that all adverse claim of this defendant and all persons claiming or pretending to claim said premises or any part thereof through or under said defendant are hereby adjudged and decreed to be invalid and groundless, and that plaintiff be, and she is hereby, ordered and adjudged to be the true and lawful owner of the land described in plaintiff's complaint and every part and parcel thereof, and that her title thereto is adjudged to be quieted against all claims, demands, or pretentions of the defendant, who is hereby perpetually enjoined from setting up claim thereto or to any part thereof. Said premises are bounded and described as follows, to wit:

Lot four (4), situated in section ten (10), in township twenty (20) north, of range three (3) east, *or* what is known and described as Votaw's addition to the city of Tacoma, as will appear by a reference to the map of said addition now on file in the office of the auditor of Pierce county, Washington Territory.

And it is hereby further ordered, adjudged, and decreed that plaintiff do have and recover her costs and expenses paid

205 herein and taxed at $— against the said defendant Mariah J.

Galliher, and that execution issue therefor; to all of which the defendants excepts.

FRANK ALLYN, *Judge.*

July 28th, '87.

In the District Court of the Second Judicial District of the Territory of Washington, Holding Terms at Tacoma, in and for Pierce County.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*, Defendants. } Notice of Appeal.

To H. P. Cadwell, the above-named plaintiff, and E. P. Cadwell and Theo. C. Sears, plaintiff's attorneys:

You and each of you will please take notice that the defendant, Mariah J. Galliher, in the above-entitled cause hereby appeals to the supreme court of Washington Territory from that certain judgment and decree rendered in the above-entitled court and cause on the twenty-eighth day of July, A. D. 1887; which said
206 judgment is in the words and figures following, to wit:

In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma, in and for Pierce County.

HANNAH P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL *et al.*, Defendants.

This cause having been regularly called for trial on the 15th day of July, 1887, it still being of the regular June term of this court, and the plaintiff appearing by her attorney-, E. P. Cadwell and T. C. Sears, and the defendant Mariah J. Galliher by her attorney-, John P. Judson and Nathan S. Porter, and the evidence being introduced to support the issue of the plaintiff and defendant, and the argument of counsel being heard, and the court, being unable at this time to render a final decision in this cause and taking the matter under advisement and on the 26th day of July being fully advised in the premises as to the question of facts herein in controversy and the conclusion of law upon said finding of facts, finds as follows in the following findings of facts:

That on or about March 1st, 1886, the plaintiff herein filed her petition, showing that she was in possession of a certain parcel of land, to wit, lot four (4), situated in section ten (10), township
207 twenty north, of range three east, in Pierce county, W. T., and claiming to be the absolute owner thereof; that defendant Mariah J. Galliher made some claim thereto and asked to have her title quieted.

In July, 1886, defendant Mariah J. Galliher filed her answer, denying plaintiff's title and alleging title in herself by virtue of an original — on said land by her husband, Silas Galliher, about August 10th, 1872.

To this plaintiff replied, putting in issue the legal effects of said entry of said Galliher.

That plaintiff is in possession of said premises and has been, through her grantors, under patent originally issued to Francis S. H. Wing April 20, 1882, upon his application of August 30th, 1881; that Silas Galliher on August 10th, 1872, filed an original entry on this land, and soon after died.

That his widow, this defendant, built a small house on said land and lived there irregularly, off and on, from 1873 to 1875.

That the Galliher entry was cancelled by the land department in Olympia, W. T., December 4, 1879.

That she thereupon applied to purchase said land; which application was rejected December 14th, 1880, and approved by the Secretary of the Interior June 1st, 1881, in an order in words as follows:

"It appears that this tract of land was embraced in the homestead entry of Silas Galliher, made August 10th, 1872. Mr. Galli-
208 her died April 18th, 1873, and his entry was cancelled December 14th, 1879, for want of final proof within the statutory period of seven years after due notice. It was competent for his widow to have perfected such entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no legal claim thereto until November 23d, 1880, the date of her present application."

That the defendant Mariah J. Galliher first went upon said land in August, 1873, and made flying visits thereto e-ch spring and fall during the years 1873, 1874, and 1875, and was not in all upon said land to exceed thirty weeks.

That her home in the meantime was in Olympia.

That the defendant Francis B. H. Wing went at once into possession of said land, and has ever since continuously, by himself and his successors, held uninterrupted possession of said land since said patent issued to him by the Government, in 1882.

That the defendant Mariah J. Galliher wilfully and with full intent to do so abandoned said land in February, 1876, and has not been upon said land or made any claim thereto, to the title, or to the possession thereof until brought into court by this plaintiff in this suit.

That the defendant Mariah J. Galliher has taken no legal steps to assert her claim to said land since the rejection of her claim by the Government, although more than four years after a patent has issued for said land and more than ten years since she was
209 last upon said land with any intent of remaining, and that she now makes no claim until brought into court by this plaintiff.

That at the time she abandoned said land it was of little value; that when she makes her claim now it has appreciated much in value.

As a conclusion of law from the foregoing facts I find—

That there is no equity in defendant Mariah J. Galliher's claim;

that she had no existing right in said land when she applied to purchase the same from the Government.

Therefore, by virtue of the law and by reason of the premises aforesaid, it is hereby—

Ordered, adjudged, and decreed that the plaintiff have judgment or decree as prayed for in her complaint herein against this defendant; that all adverse claims of this defendant and all persons claiming or pretending to claim said premises or any part thereof through or under said defendant are hereby adjudged and decreed to be invalid and groundless, and that plaintiff be, and she is hereby, ordered and adjudged to be the true and lawful owner of the land described in plaintiff's complaint and every part and parcel thereof, and that her title thereto is adjudged to — quieted against all claims, demands, or pretentions of the defendant, who is hereby perpetually enjoined from setting up claim thereto or to any part thereof.

Said premises are bounded and described as follows, to wit:

Lot four (4), situated in section ten (10), in township
210 twenty (20) north, of range three (3) east, *or* what is now known and described as Votaw's addition to the city of Tacoma, as will appear by a reference to the map of said addition now on file in the office of the auditor of Pierce county, Washington Territory.

And it is hereby further ordered, adjudged, and decreed that plaintiff do have and recover her costs and expenses paid herein and taxed at $— against the said defendant, Mariah J. Galliher, and that execution issue therefor; to all of which the defendant excepts.

July 28, 1887.

FRANK ALLYN, *Judge.*

And also from the order denying said defendant's motion for a new trial, made and entered in the minutes of said court the 4th day of October, A. D. 1887.

The following is a particular description of the decision, ruling, and decree by which the defendant claims to have been aggrieved and which she relies upon as grounds for reversing said judgment or decree:

I.

The court erred in finding "that plaintiff is in possession of said premises and has been through her grantors under patent originally issued to Francis B. H. Wing April 20th, 1882, upon his application of August 30, 1881."

II.

The court erred in finding "that the defendant Mariah
211 J. Galliher made only flying visits to the said land each spring and fall during the years 1873, 1874, and 1875, and was not in all upon said land to exceed thirty weeks; that her home in the meantime was in Olympia."

III.

Court erred in finding "that defendant B. H. Wing went at once into possession of said land and has ever since continuously, by himself and his successors, held uninterrupted possession of said land since said patent issued to him by the Government, in 1882."

IV.

The court erred in finding "that the defendant Mariah J. Galliher wilfully and with full intent to do so abandoned said land in February, 1876, and has not since been upon said land or made any legal claim thereto, to the title, or to the possession thereof until brought into court by the plaintiff in this suit."

V.

That court erred in finding "that defendant Mariah J. Galliher has made no claim to said land since the rejection of her claim by the Government, although more than four years after patent has issued for said land and more than ten years since she was last upon said land with any intent of remaining, and that she now makes no claim until brought into court by this plaintiff."

VI.

The court erred in finding "that at the time she abandoned
212 said land it was of little value; that when she makes her claim *not* it has appreciated much in value."

VII.

The court erred in finding "that there is no equity in defendant Mariah J. Galliher's claim; that she has no existing right in said land when she applied to purchase the same from the Government."

VIII.

The court erred — rendering the final judgment and decree in this cause, hereinbefore set out in full.

IX.

The court erred in denying defendant's motion to set aside the findings and for a new trial, filed in this cause on the first day of August, 1887.

X.

The court erred in denying defendant's motion to set aside the findings and for a new trial, filed October 3rd, 1887.

XI.

The court erred in not finding—

1st.

That on the 10th day of August, 1872, the land described in the complaint was public land, unappropriated by any one.

2nd.

That Silas Galliher, then and there being a citizen of the United States, the head of a family, and over twenty-one years of
213 age, duly entered said land, under the homestead laws of the United States, on said 10th day of August, 1872, and that he received the usual homestead receipt for fees paid.

3d.

That thereafter and in the winter of 1872 and 1873 said Galliher made some improvements on said land by clearing some two acres and commencing the erection of a dwelling thereon, and that thereafter and in February, 1873, said Silas Galliher died, leaving a widow, the defendant, and five minor children.

4th.

That said widow, this defendant, soon thereafter went upon said land, completed the dwelling-house, cleared some four acres of the land, set out fruit trees, planted a garden, and lived thereon with her family during the summers of 1873, 1874, and 1875.

5th.

That upon her return to the land in 1876 she found that the house had been broken open, the furniture stolen, and the floors taken out of the building, and not having the money with which to repair the building and refurnish house she returned to Olympia and since said date has not resided on said land.

6th.

That in 1879 the said homestead entry was cancelled by the
214 department because final proof was not made within the time fixed by law.

7th.

That on the 24th of November, 1880, the said tract of land was unappropriated public land; that there was no adverse claim thereto of any kind, and that on said day this defendant, as widow of Silas Galliher, deceased, made her application to purchase said land at the United States land office at Olympia, under the 2nd section of the act of June 15th, 1880, in the manner provided by law, and then and there tendered the Government price for said land, the fees for making said entry.

8th.

That her application to purchase said land was refused, and that she took an appeal to the Commissioner of the General Land Office, who affirmed the decision of the register and receiver, and that thereafter she took an appeal to the Secretary of the Interior, who affirmed the decision of the Commissioner on the 4th of June, 1881.

9th.

That on December 20th, 1881, F. B. H. Wing entered said land under the timber act, and that patent was issued to him for said land April 20th, 1882.

10th.

215 That plaintiff's title to said land is based upon the patent so issued to said Wing, and that said F. B. H. Wing, this plaintiff, and her grantors at all times had notice of the equities of this defendant in and to said land, and that they purchased the same subject to her rights.

And the court erred in not finding as a conclusion of law that plaintiff holds the legal title to the land in trust for the defendant, and that defendant is entitled to a conveyance of the same from the plaintiff to herself upon her paying plaintiff the amount paid by said F. B. H. Wing for said land, with legal interest thereon.

N. S. PORTER AND
J. P. JUDSON,
Attorneys for Mariah J. Galliher, Defendant.

216 [Endorsed:] In the district court of the second judicial district of the Territory of Washington, holding terms at Tacoma, in and for the county of Pierce. H. P. Cadwell, plaintiff, *vs.* Thomas Carroll and others, defendants. Notice on appeal. Filed October 13, 1887. A. Reeves Ayres, clerk. T. O. Abbott, deputy clerk. J. P. Judson & N. S. Porter, attorneys for defendant Mariah J. Galliher.

217 In the District Court of the Second Judicial District of the Territory of Washington, Holding Terms at Tacoma, in and for Pierce County.

H. P. CADWELL, Plaintiff,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, H. L. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, Mariah J. Galliher, *et al.*, Defendants. } Bond on Appeal.

Know all men by these presents that we, Mariah J. Galliher, as principal, and Mrs. Z. N. McCoy, B. F. Galliher, as sureties, are firmly held and bound unto H. P. Cadwell, plaintiff in the above-entitled action, in the full sum of three hundred and fifty dollars, lawful money of the United States of America; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of October, A. D. 1887.

Whereas the district court of the second judicial district of
218 Washington Territory, holding terms at Tacoma, rendered a judgment in the above and foregoing entitled cause against

the above-bounden Mariah J. Galliher for costs, taxed at —— dollars;

And whereas the said Mariah J. Galliher has taken an appeal in said cause to the Supreme Court:

Now, therefore, the condition of this obligation is such that if the said Mariah J. Galliher shall pay to the said H. P. Cadwell all costs and damages that shall be adjudged against her on appeal, and that if she will satisfy and perform the judgment or order appealed from in case it shall be affirmed and any judgment or order which the Supreme Court shall render or order to be rendered by the inferior court, not exceeding in amount or value the original judgment, then this obligation shall be null and void; otherwise to remain in full force and virtue.

MARIA J. GALLIHER. [SEAL.]
Z. N. McCOY. [SEAL.]
B. F. GALLIHER. [SEAL.]

Signed, sealed, and delivered in the presence of—

T. O. ABBOTT.
M. J. PATRICK.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

Z. N. McCoy and B. F. Galliher, being first duly sworn, say that they are the persons who have signed the foregoing bond as sureties; that they are residents of Pierce county, Washington Terri-
219 tory; that they are worth the sum of three hundred and fifty dollars in property exempt from execution over and above all just debts and liabilities.

Z. N. McCOY.
B. F. GALLIHER.

Subscribed and sworn to before me this 21st day of October, A. D. 1887.

T. O. ABBOTT,
Deputy Clerk Dist. Court.

220 [Endorsed:] In the district court of the second judicial district of the Territory of Washington, holding terms at Tacoma, in and for the county of Pierce. H. P. Cadwell, plaintiff, *vs.* Thomas Carrroll and otliers, defendants. Bond on appeal. Approved and filed this 24th day of October, 1887. A. Reeves Ayres, clerk, by T. O. Abbott, deputy clerk. J. P. Judson & N. S. Porter, attorneys for defendant Maria J. Galliher.

221 In the Supreme Court of Washington Territory.

MARIAH J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee.

Opinion. Rendered January 31st, 1888.

Mr. Justice LANGFORD delivered the opinion of the court:

This — a case wherein the appellee brought her suit in the district court against the appellant to quiet title to a certain tract of land.

The appellee holds title by virtue of a patent from the United States to one Wing. The appellant claims that she was entitled to enter the land under the homestead laws long prior to the entry and patent to Wing, which right she was deprived of by an erroneous decision of the Land Department of the United States, and hence is entitled to a decree against appellee that he hold the title in trust for her.

It is conceded by admissions upon the argument that, when this action was commenced, appellee and others holding under the patent had improvements upon the tract of great value, and the tract and the improvements thereon are worth about twenty thousand dollars, and this is a test case to try the rights of all holding under the patent.

It is further conceded that Silas Galliher, the husband of appellant, upon the 10th day of August, 1872, made a formal entry of the tract under the homestead act and died about eight months thereafter at Olympia, W. T.

222 The first point to be decided is whether this entry was made in good faith or was fraudulent from the beginning.

At the time of the entry said Galliher and his wife had their domicile and home at Olympia, had property there, and were engaged in keeping a hotel there. They had children and were educating them there. Olympia is forty miles from the tract of land in dispute. The tract of land consists of gravelly, barren land, covered with timber, adjoining the city of Tacoma. The husband, during his lifetime of about eight months after the entry, continued his residence and business at Olympia, and during that time had not done anything upon the land except cut down a few trees and a little brush and lay a few logs for the foundation of a log cabin. There is no evidence that he moved to the land or made any preparation to move there or made any declaration of such intent. The character and small amount of land make it extremely improbable that any sane man could have intended at that time to move upon and cultivate this land for the purpose of making a farm out of it as his home. His conduct and words gave no evidence of such intent; his failure to prepare a residence for more than six months and failure to make any change in Olympia which would indicate that he intended to change his residence are circumstances which satisfactorily show that, at the time he made the

formal entry, he did not intend to reside upon and cultivate the land as the homestead law requires. The intent must have been to enter the land for speculation, either to use or sell the timber or for some other purpose.

223 The fact that the land was valuable only for timber, and that its value for all purposes was, some years after his entry, only about three dollars *pre* acre, shows that he never intended to reside upon the land as his home and farm and cultivate it. If his entry was made for any other purpose than this it was fraudulent and void and no equity can be founded upon it.

This is not a case of an originally valid entry afterwards abandoned, but of an originally void entry. The above considerations alone would be sufficient to prevent any holder of a legal title to be held a trustee for the fraudulent entryman.

It is claimed that Wing, when he made application to enter the land under the timber act, had notice of the Galliher equity. The notice claimed is that the appellant had made an application to enter the land at the U. S. land office, which had there been adjudicated against her; that she had filed notice of this in the auditor's office of the county wherein the land is situated; that he could have seen improvements upon the land made by appellant after her husband's death.

First. Of the notice in the auditor's office, it is sufficient to say that there was no law authorizing it, and it was not, therefore, implied notice, and there is no evidence that appellee or Wing ever saw it or heard of it.

Second. As to the log cabin and a little fencing rotting upon the land and the clearing, if any, overgrown with pine timber. These did not tend to prove the land had been occupied at all. The

224 appearances of the land would rather indicate the presence of trespassers on the public land to strip it of timber which had been abandoned by them.

Third. As to the adjudication against appellant in the land office, which was June 1st, 1881. No doubt all parties had notice of this adjudication and many of the reasons given therefor. The adjudication was, in effect, that the appellant had no right to enter the land, and that the land was public land of the United States, subject to entry. This was a binding desision upon all parties until it was reversed, and, instead of being a notice that appellant had a right, it was notice that she had no right. True, the reasons given for the decision might have been erroneous, but, if they were, this did not tend to vitiate the decision itself. No doubt both the appellant and Wing supposed that the reasons given were correct law until long after Wing had received a patent.

True, the affirmative plea that the appellee was an innocent purchaser without notice is not formally made, but each side, without objections, took evidence upon this point, and the case was submitted to the court below upon this evidence without objections to the form of the pleadings. Had the point been made in the court below that court would rightly have disregarded it or ordered the pleadings to be amended to conform to the evidence. The want of

an affirmative plea should have been disregarded in the court below, as it was and will be disregarded here.

The appellant knew of this decision and acquiesced in it without objection until 1884 and long after patent had issued to
225 Wing. She could not have applied to open the case or had a rehearing until 1882, when the Miller case was decided. In the latter case the reasons for deciding the case of Galliher were disapproved.

In the meantime, on the 20th of December, 1881, acting on the decision in the Galliher case, Wing applied to enter. In this application to enter the law requires a notice to be published to all the world of the intended entry. This notice describes the land that is to be entered and states that it is to be entered because it is more valuable for timber than for agriculture. Appellant had this notice, but made no objection to Wing's entry in the United States land office or elsewhere until long after Wing had obtained his patent and paid his money. The patent was issued to him April 20th, 1881.

The adjudication that this was unoccupied public land, more valuable for timber than for anything else, was the foundation of the patent. This adjudication was binding upon all private parties and upon the appellant among them, and after this judgment by default appellant cannot relitigate the question. In 1884 appellant applied to the General Land Office to be allowed to enter. That office wrote her of the above adjudications in that office, and that they were final. From this time the appellant never attempted to set up any claim until she answered in this action. In the meantime the property had been laid out into town lots and valu-
226 able improvements put upon them, and after this appellant first makes known that she has a cla-m and insists upon it. If she had a right, which she had not, and had permitted those sales and improvements without notice she could not now assert a right, but would be estopped from so doing. If she were not entirely estopped she would have to tender payment of the price paid by appellee and the costs of the improvements before she could ask a court of equity to help her. Instead of this she does not offer to pay anything except the Government price, which would be only a few cents.

The evidence that appellant attempted to perfect her claim by improving the land prior to 1876. If her evidence were conclusive of her *bona fides* it would not avail her, for the original entry, being fraudulent and void, could not be perfected. The evidence is far from showing that she ever intended this claim for her home or farm. It rather discloses the fact that she continued to reside at Olympia, making occasional visits to the land for speculative purposes. No improvements made under such circumstances could in any case give her a right or perfect a right.

Wing never by any act of his prevented appellant from perfecting her claim in the Land Department. He misled that department neither as to law nor fact. Hence this case is not similar to any case cited wherein a patentee was held trustee for another. The

equities are as strong in favor of Wing as in favor of appellant, and were he a party his legal title would prevail. Much stronger are the equities of appellee, and for this reason the conclusion is
227 still strong that appellee's title shall prevail.

Let the judgment be affirmed.

W. G. LANGFORD,
Asso. Justice.

228 From an examination of the record in this case I cannot resist the conclusion that Silas Galliher in his lifetime did not in good faith enter the land in question, and the appellant's subsequent acts lacked the same essential quality. The whole proceeding was one of many similar shams entered upon and persisted in for the purpose of defrauding the Government by a bald pretense of complying with the requirements of the beneficent homestead law, while in fact no such real purpose existed, and they were not complied with or attempted to be.

Instead of acquireing a home or cultivating the soil there may have been in fact a purpose to speculate in the future—in city lots—but the idea of a homestead never existed.

The judgment should be affirmed.

R. A. JONES, *C. J.*

[Endorsed:] Galliher. Filed Jan. 31st, 1881. R. G. O'Brien, clerk.

229 In the Supreme Court of Washington Territory, January Term, 1888.

MARIAH J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee.

Opinion. Rendered Jan. 31, 1888.

Mr. Justice Turner delevered the following dissinting opinion:

By TURNER, *J.:*

On the 10th day of August, 1872, the husband of the appellant, Silas Galliher, made a homestead entry of lot four (4), sec. ten (10), township twenty (20) north, of range three (3) east, of the Willamette meridian, situated in Pierce county, W. T., and containing fifty-seven and one fourth (57¼) acres of land. Galliher died April 13th following, never having resided on said land. Before his death, however, he laid the foundation for a house upon the land, which house his widow erected after his death. He also slashed (cleared) some land on the place. His widow moved upon the land with her family about three months after her husband's death and spent about four hundred dollars improving the place. She lived upon the place with her family a part of the time each year until the year 1876. Upon this point she testified: "The first two years I spent more time on the claim than I did at Olympia, but the last

two I spent more of my time at Olympia." She ceased to make the claim her home in 1876 because, as she says, "I *I* had to.
230 My money was all gone, and I had no way on it to make a living in 1876. I could not support my family if I remained there, and I had no money."

The homestead entry of Silas Galliher was cancelled by the Commissioner of the General Land Office December 14th, 1879, for want of final proof within the statutory period of seven years after due notice.

On November 23rd, 1880, Mrs. Galliher filed with the register and receiver at Olympia an application to purchase said tract of land under the provisions of an act of Congress entitled "An act relating to the public lands of the United States," approved June 15th, 1880, and at the same time tendered to the receiver the purchase price of said land. Her application and tender were rejected by the local officers, and on appeal to the Commissioner of the General Land Office and the Secretary of the Interior respectively this decision was successively affirmed on the ground that Mrs. Galliher had lost the right to purchase under the act of June 15th, 1880, by reason of her abandonment of the homestead.

On the 20th day of December, 1881, subsequent in point of time to the application of Mrs. Galliher to purchase under the act of June 15th, 1880, one F. B. H. Wing entered the tract of land in question under and by virtue of an act of Congress approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," and he received patent to the land April 20, 1882.

231 The appellee derives title to the tract of land by mesne conveyances through successive grantees of the patentee, Wing. This suit was brought by the appellee to quiet the title to said premises, and the appellant was made a party defendant. The latter in her answer set up the facts above recited, made a tender of the purchase price of said land, and prayed that the appellee be decreed to hold the title to said tract of land in trust for herself and the heirs of her husband, and that appellee be required to convey the same to her by a good and sufficient deed.

The court below found against the appellant, and the whole case is now before us for review.

1. If the application of Mrs. Galliher to purchase under the act of June 15, 1880, was improperly rejected by the officers of the Land Department, then she is entitled to the relief prayed against the appellee unless other facts which I shall presently mention constitute a bar.

Rector *vs.* Gibbons, 111 U. S. Sup. Court Reports, p. 291.
Townsend *vs.* Greeley, 5 Wallace, pp. 326–'35.
Carpenter *vs.* Montgomery, 14 Wallace, pp. 480–'96.
Shepley *vs.* Cowan, 9 U. S. Sup. Court Reports, p. 330.
Moore *vs.* Robbins, 96 U. S. Sup. Court Reports, p. 530.
Quimby *vs.* Conlan, 104 U. S. Sup. Court Reports, p. 420.
St. Louis Smelting Company *vs.* Kemp, 104 U. S. Sup. Court Reports, p. 636.

Johnson *vs.* Towoley, 13 Wallace, p. 80.
Silver *vs.* Ladd, 7 Wallace, p. 228.
Cunningham *vs.* Ashley, 14 Howard's U. S. Supreme Court Reports, pp. 377 *et seq.*

232 2. The application of Mrs. Galliher to purchase the land was rejected by the Land Department on the theory that one who abandoned a homestead entry on the public lands was not entitled to the benefit of the provisions of the act of June 15, 1880. This was the first case where such a holding was made. Soon after the decision of the Gallaher case another case, involving the same questions, was brought before Secretary Teller, and he explicitly overruled the Galliher case. The following is his opinion:

Secretary Teller to Commissioner McFarland, June 3, 1882.

"I have considered the appeal of John W. Miller from your decision of October 22, 1881, rejecting his application to purchase under the act of June 15, 1880 (21 Statutes, 237), the E. ½ of the N. E. ¼ of 6, 21 S., 27 E., Visalia, California, entered April 28, 1873, homestead No. 777.

"It appears that your office cancelled the entry June 17, 1880, on failure of Mr. Miller to make final proof within seven years from its date; that the land is still vacant, and that the fact of such cancellation is the only reason assigned for refusal to allow the present application, your decision being based on that of my predecessor in the case of Mariah Galliher June 1, 1881.

"The act of 1880, section 2, specifically grants the right of purchase in all cases where the land was properly subject to the original entry, limited only by the proviso that 'this shall in nowise interfere with the rights or claims of others who may have subsequently entered such lands under the homestead law.'

233 "As no subsequent entry upon any tract taken as a homestead can be made until after cancellation of such original homestead entry this proviso would have nothing in any case whatever to operate upon except upon the theory that they right of purchase thus limited might be exercised as well after cancellation as before, and that the only purpose of Congress was to save any entry subsequently made in accordance with existing laws from prejudice or interference under the new enactment, but to bestow upon the original claimant the otherwise restricted right to acquire by purchase the land which he had failed to secure by strict compliance with the law under which he had originally entered. It can make no difference to the Government whether the entry has been cancelled or not. The mere act of cancellation has no force in connection with the statute.

"In this case less than two months had elapsed after the expiration of the seven years, and the entry was actually cancilled after the passage of the remedial act, while there are on your files hundreds of entries still uncancelled w-ere months and years have passed since the expiration of the seven years limited by law for

making final proof, yet the rule has not been applied to these, and the parties making such entries have been allowed the benefit of the act of 1880 whenever applied for.

"There can be no reason for this invidious distinction. Upon full consideration I am convinced that the decision in the
234 case of Galliher must have been inadvertent and should not stand as a precedent, the true construction, as I apprehend, being as above stated. I accordingly reverse your decision and direct the allowance of Miller's application."

Copp's Land Owner, vol. 9, p. 57.

This latter decision has been followed by an unbroken line of decisions in the Interior Department, with one exception, down to the present time. The exception was an apparently inadvertent decision made by Acting Com'r Stockslager. The decision of Secretary Teller was affirmed by Secretary Lamar at a later period than the decision of Acting Com'r Stockslager, and still later by acting Secretary Mildrow.

Northern Pacific Railroad *vs.* Burt, 12 Copp's Land Owner, p. 138.

Simpson *vs.* Foley, 12 Copp's Land Owner, p. 131.

The reasons for the views which at present prevails in the Interior Department are clearly stated in the opinion of Secretary Teller and they are satisfactory to me. I conclude, therefore, that the decision on Mrs. Galliher's application to purchase was wrong and that she was entitled to purchase.

3. The last proposition is not true if the original entry of Silas Galliher was fraudulent. I agree that one can acquire no rights to purchase under the act of June 15, 1880, by reason of an attempt to defraud the Government through and by means of the homestead act; but I can find nothing in the record which establishes
235 that Silas Galliher intended any fraud when he made his original entry. The poor character of the soil of the tract in question and the fact that it was heavily wooded is urged as evidence of fraudulent intent; but it is more than likely that Galliher had the foresight to discern the future value of the land by reason of its proximity to the growing city of Tacoma. If, foreseeing this, he was ready to undergo the hardships incident to making a home on the place for the required time and of cultivating the same, his enterprise involved no fraud that I can see. It is true that he did not reside upon the place prior to his death, but he showed good faith by commencing the erection of a house, which his wife afterwards completed, and by slashing the undergrowth on the premises or on a part of them. Why he did not do more is explained by the fact, stated in the testimony of his wife, that he was sick for a year before his death. Neither failure to reside upon land after a homestead entry nor abandonment after residence under such entry constitutes fraud. This is the holding of the Land Department.

Case of August Smith, 10 Copp's Land Owner, p. 104.

The holding of the department is in consonance with the law. There is nothing in either of said acts, construed according to the principles of law applicable to fraud, which will justify a decision that they constitute fraud. I conclude, therefore, that the homestead entry of Silas Galliher was not fraudulent.

4. It was insisted on the hearing that the appellant had
236 slept on her rights until this land had become valuable, and that it was inequitable for her to now make her claim. Patent was granted Wing April 20, 1882. Mrs. Galliher was brought into this suit and required to formulate her claim to the land in the summer of 1886. This was about four years after the patent to Wing. She was not barred of relief by the statute of limitations, nor has she slept an unreasonable length of time on her rights. There is absolutely nothing in the record upon which to ground a plea of equitable estoppel.

5. Neither is there anything upon which to found the defense that the appellee or any of her grantors were purchasers, for value, without notice. This is matter to be affirmatively pleaded. Pomeroy's Equity Jurisprudence, vol. 2, section 784. Not only is this defence not pleaded by appellee, but the reply expressly admits notice of the decision of the Secretary of the Interior adverse to Mrs. Galliher on the part of the appellee and all her grantors. If they knew of this decision they had actual notice of the claim of Mrs. Galliher and of the equities in her favor.

For the foregoing reasons I am of the opinion that the appellant was entitled to the decree prayed for in her answer, and I dissent from the conclusion reached by the majority of the court.

GEORGE TURNER,
Associate Justice.

237 In the Supreme Court of Washington Territory.

FRIDAY, *January 20th*, 1888.

MARIAH J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee. } No. 554.

This cause coming on to be heard upon the transcript of the records of the district court of the second judicial district of Washington Territory, holding terms at Tacoma, and the argument of the counsel being concluded, the court takes the matter under advisement.

MARIA J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee. } No. 554. Judgment.

This cause having been heretofore submitted to the court upon the transcript of the record of the district court of the second judicial district of Washington Territory, holding terms at Ta-
238 coma, and upon the argument of counsel, and the court having fully considered the same and being fully advised in the

premises and having filed its opinion in writing, it is now, on this 31st day of January, A. D. 1888, on motion of E. P. Cadwell and T. C. Sears, of counsel for the appellee, considered, adjudged, and decreed that the judgment of the said district court be, and the same is hereby, affirmed, with costs, and that the said H. P. Cadwell recover of and from the said Maria J. Galliher the costs of this action, taxed and allowed at $96.70, and that execution issue therefor; and it is further ordered that this cause be remitted to the said district court for further proceedings.

THURSDAY, *February 2d*, 1888.

MARIA J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee. } No. 554.

The motion of the appellant for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, heretofore filed on the — day of ——, A. D. 1888, having, on the second day of February, 1888, been brought on to be heard, and it now, on this second day of February, A. D. 1888, appearing to the court from the records in the case and the statement of counsel
239 that the matter in dispute in the above-entitled cause exceeds the sum of five thousand dollars exclusive of costs, and it also appearing from the records in the cause that the construction of a statute of the United States is brought in question, and the court, being otherwise fully advised in the premises, grants said motion.

And now, therefore, it is ordered by the court that an appeal to the Supreme Court of the United States from the judgment of this court in the above-entitled cause be, and hereby is, allowed; and it is further ordered that Hon. Frank Allyn, associate justice of the supreme court, be, and is hereby, designated as the judge who shall take and approve the security, which shall operate as a supersedeas upon perfecting said appeal, and issue the citation thereon; and it is ordered that the amount of said supersedeas for the purpose of the prosecution of said appeal be fixed at one thousand dollars, and that appellant have, and is hereby given, sixty days from this date as time within which to prepare and file said supersedeas bond.

Read and approved this 2nd day of February, 1888.

R. A. JONES,
Chief Justice.

240 *Appeal Bond.*

Know all men by these presents that we, Maria J. Galliher, as principal, and Mary A. Judson and Jacob C. Mann, as sureties, are firmly held and bound unto H. P. Cadwell, her heirs, executors, and administrators, in the sum of one thousand dollars, gold coin of the United States of America; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and

administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this eighteenth day of February, 1888.

Whereas the above-bounden Maria J. Galliher has taken an appeal from the judgment and decission of the supreme court of Washington Territory rendered in that certain cause wherein the said Maria J. Galliher is appellant and said H. P. Cadwell is appellee, decided January term, 1888, to the Supreme Court of the United States:

Now, therefore, the conditions of this obligation are such that if the said Maria J. Galliher shall well and truly prosecute the said appeal so taken to the Supreme Court of the United States and pay all costs and damages which said Supreme Court may adjudge against her, then this obligation shall be null and void; otherwise to remain in full force and virtue.

MARIA J. GALLIHER. [SEAL.]
JACOB C. MANN. [SEAL.]
MARY A. JUDSON. [SEAL.]

Signed, sealed, and delivered in presence of—

W. C. SHARPSTEIN.
JOHN. P. JUDSON.

241 TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

Mary J. Judson, being first duly sworn, says that she is one of the sureties on the above and foregoing bond; that she is a resident of Pierce county, Washington Territory, and that she is the owner in fee simple in her own right of five hundred and fifty acres of land, situated in Thurston county, worth more than five thousand dollars, and that there are no encumbrances thereon, and that she owes no debts to any one.

MARY A. JUDSON.

Subscribed and sworn to before me this 18th day of February, A. D. 1888.

W. C. SHARPSTEIN,
Notary Public, Pierce County, W. T.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

Jacob C. Mann, being first duly sworn, says that he is one of the sureties on the above and foregoing bond; that he is a resident of Pierce county, Washington Territory; that he is worth the sum of one thousand dollars over and above all his debts and liabilities of property not exempt from execution.

JACOB C. MANN.

Subscribed and sworn to before me this 18th day of February, A. D. 1888.

W. C. SHARPSTEIN,
Notary Public, Pierce County, W. T.

242 [Endorsed:] Mariah J. Galliher, appellant, *vs.* H. P. Cadwell, appellee. Bond on appeal. Filed February 25th, 1888. R. G. O'Brien, clerk.

243 In the Supreme Court of the Territory of Washington.

MARIA J. GALLIHER, Appellant, *vs.* H. P. CADWELL, Appellee. } No. 554. Appealed to the Supreme Court of the United States.

The United States of America to H. P. Cadwell, appellee, and to T. C. Sears and E. P. Cadwell, attorneys for the appellee, Greeting:

Whereas the appellant, by her counsel, did, on the 31st day of January, 1888, in the supreme court of Washington Territory, in open court, give notice of an appeal of this cause to the Supreme Court of the United States, and which appeal was by said supreme court of Washington Territory allowed, then and there entered of record in said court; and

Whereas the said supersedeas bond ordered by said supreme court in this cause was within time allowed by the court, approved by the associate justice, Hon. Frank Allyn, and filed with the clerk of the said supreme court of Washington Territory; and

Whereas a certified transcript of all records, files, and evidence in this cause have been by the clerk transmitted to the clerk of the Supreme Court of the United States:

Now, therefore, you are hereby cited and admonished to
244 be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, 1888, pursuant to said appeal filed in the clerk's office of the supreme court of Washington Territory, wherein Maria J. Galliher is appellant and H. P. Cadwell appellee, to show cause, if any there be, why the judgment rendered against said appellant, as in the said appeal mentioned and set forth, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Frank Allyn, associate justice of the supreme court of Washington Territory, this 27th day of September, 1888.

FRANK ALLYN,
Associate Justice of the Supreme Court of Washington Territory.

TERRITORY OF WASHINGTON, } ss:
County of Pierce, }

I, J. H. Wilt, sheriff of Pierce county, Washington Territory, do hereby certify that I received the within citation on the 27th day of September, 1888, and on the 27th day of September, 1888, I duly

served the same upon H. P. Cadwell, therein named as appellee, by delivering a true copy thereof to T. C. Sears, Esq., one of the attorneys for the said H. P. Cadwell in the said cause, at Tacoma, Pierce county, W. T., the said H. P. Cadwell not being a resident of nor having a place of business within said county.

Dated at Tacoma this 27th day of September, 1888.

J. H. WILT,
Sheriff of Pierce County, W. T.,
By C. A. WILT, *Deputy.*

Fees:

To serving citation ------	$1 00
Mileage ----------	20
	$1 20

245 The within appeal bond is hereby approved by me this 21st day of February, 1888.

FRANK ALLYN,
Associate Justice 2nd Dist.

Office of the clerk of the supreme court of the Territory of Washington.

OLYMPIA, W. T.

MARIA J. GALLIHER, Appellant,
vs.
H. P. CADWELL, Appellee.

I, Francis Henry, clerk of the supreme court of the Territory of Washington, hereby certify that the foregoing is a full, true, and complete transcript of the record in the above-entitled cause and the whole thereof, as the same is now in my office.

Seal Supreme Court, Washington Territory.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court, at my office, in Olympia, this third day of October, A. D. 1888.

FRANCIS HENRY,
Clerk of the Supreme Court.

Endorsed on cover: Case No. 13,384. Washington Territory supreme court. No. 265. Maria J. Galliher, appellant, *vs.* H. P. Cadwell. Filed October 18, 1888.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1951

No. 1

[illegible]

[illegible]

BRIEF FOR APPELLANT

JOSEPH W. BORDEN, JR.

Attorney for Appellant

IN THE SUPREME COURT

OF THE

UNITED STATES.

MARCH TERM, 1892.

MARIAH J. GALLIHER, *Appellant*,
vs.
H. P. CADWELL, *Appellee.*

} *Appeal from the Supreme Court of Washington Territory.*

BRIEF FOR APPELLANT.

JOSEPH W. ROBINSON,
Attorney for Appellant.

OLYMPIA, WASH.:
STATE PRINTING AND PUBLISHING COMPANY.
1892.

STATEMENT OF FACTS.

THE appellee commenced an action in the district court holding terms at Tacoma, to quiet the title to the premises described in the complaint. There were several defendants, and all confessed judgment except the appellant, who answered the complaint.

The appellee claims title to the land through several conveyances from F. B. H. Wing, who entered the land under the act of congress, approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," on December 20, 1881, and received his patent April 20, 1882.

The appellant claims the title to the land by virtue of her application to purchase the same under the second section of the act of congress, approved June 15, 1880, entitled "An act relating to the public lands of the United States," made November 24, 1880. Her application to purchase under the said act is based on the homestead entry of her deceased husband, embracing this land, made August 10, 1872.

Her said application to purchase the land was rejected by the register and receiver. She appealed from their de-

cision to the commissioner of the general land office, and he sustained the decision of the local office. Appellant again appealed to the secretary of the interior, and he sustained the decision of the commissioner.

The following embraces the material points in the decision of the secretary of the interior:

It appears that this tract of land was embraced in the homestead entry of Silas Galliher, made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was canceled December 14, 1879, for want of final proof within the statutory period of seven years, after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no legal claim thereto until November 23, 1880, the date of her present application.

The secretary decides that the application to purchase comes too late after the original entry is canceled.

Her application to purchase was rejected solely because it was not made prior to the cancellation of the entry.

On the 1st day of March, A. D. 1886, the appellee commenced an action against the appellant in the district court, and the following pleadings were filed in said cause:

PLEADINGS.

In the District Court of the Second Judicial District of Washington Territory, holding terms at Tacoma, in and for Pierce county.

H. P. CADWELL, *Plaintiff*,
vs.
THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. VOTAW, ANNIE J. VOTAW, J. B. WING, JANE WING, ELIZABETH WING, THE MERCHANTS' NATIONAL BANK OF TACOMA, and MARIAH J. GALLIHER, *Defendants*. } COMPLAINT.

To the Hon. John P. Hoyt, Judge of the District Court, etc.:

Humbly complaining, comes now the above-named plaintiff and, for cause of action against the above-named defendants, states:

PARAGRAPH FIRST.

That she is now, and has been for a long time past, in the quiet possession and absolute owner of that certain tract or parcel of land, situated and lying in the county of Pierce, Washington Territory, and being more particularly bounded and described as follows, to wit: All those certain lots or parcels of lots of land, situated in the city of Tacoma, said county and territory, comprising what is now known and designated as Votaw's addition to said city of Tacoma, as the same is filed and recorded in the office of the auditor of the county of Pierce, aforesaid, and being situated and laid out upon lot four (4) of section ten (10), in townsnip twenty (20), north of range three (3), east of the Willamette meridian, and containing fifty-seven and one-fourth (57¼) acres of land.

PARAGRAPH SECOND.

That the said plaintiff claims title to the said premises, and that the said defendants, Thomas Carroll, Annie J. Carroll, Henry L. Votaw and Annie J. Votaw, J. B. Wing, Jane Wing and Elizabeth Wing, and Mariah J. Galliher, have, or pretend to have, some claim or estate or interest therein or lien thereon averse to the plaintiff.

PARAGRAPH THIRD.

That the claim of said defendants is without any right whatever, and that the said defendants, nor either of them, have not any estate, right, title or interest whatever in said land or premises, or any part or parcel thereof.

PARAGRAPH FOURTH.

That said property is not community property; that said property is the separate property of this plaintiff, acquired by gift and purchase with money belonging to this plaintiff in her own right and stead and before her marriage in the years 1879 and 1888; that said defendant Henry L. Votaw, nor one E. P. Cadwell, have any right, title, interest or estate in or to any part of said tract of land.

PARAGRAPH FIFTH.

That on the 17th day of November, 1885, the defendant herein The Merchants' National Bank commenced a certain suit in this court against one E. P. Cadwell and others, and that in said suit sued out a writ of attachment on the same day, and that under and by virtue of said writ of attachment the sheriff of Pierce county, to whom the same was directed, levied the same upon the property herein described, on the 16th day of December, 1885; that in the same suit said defendant did, on the 28th day of January, 1886, sue out of this court another writ, and the sheriff of this county did, under and by virtue thereof, on the 4th day of February, 1886, cause the same to be levied on the said premises, as the property of the defendant herein Henry L. Votaw and the said E. P. Cadwell.

PARAGRAPH SIXTH.

That on the 17th day of November, 1885, the defendant The Merchants' National Bank of Tacoma commenced another suit in this court against E. P. Cadwell, and the defendant herein, Henry L. Votaw; that on the same day the sheriff of said county of Pierce, W. T., to whom the same was directed, levied said writ on the land herein described as the property of said defendant Henry L. Votaw and said E. P. Cadwell; that on the 4th day of February, 1886, said defendant caused another writ of attachment to issue in said case, and on the same day the sheriff of Pierce county, to whom the same was directed, levied the same writ on said premises as the property of said defendant Henry L. Votaw and said E. P. Cadwell.

PARAGRAPH SEVENTH.

That said attachment remains upon the records of this county as liens against said property.

PARAGRAPH EIGHTH.

That on the 25th day of September, 1884, the defendant Henry L. Votaw and Annie J. Votaw made and entered into a contract of sale of said premises with John T. Baltzell and W. D. Tyler, wherein it was agreed, among other things, that the said Henry L. Votaw should retain the title to said land, and make and execute deeds of conveyance whenever requested so to do by the said Tyler and Baltzell; that all the proceeds of said real estate should be applied upon the payment of the purchase price of said land; that on the 17th day of August, 1885, said tract of land was conveyed by warranty deed by said Henry L. Votaw and wife, Annie J. Votaw, to one E. P. Cadwell, in trust for this plaintiff; that at the same time said contract was assigned to said E. P. Cadwell in trust for this plaintiff; that on the 15th day of October said tract of land was conveyed by warranty deed, and said contract was assigned in writing, to this plaintiff in *personorem* and for the purpose of carrying out the trust above stated, as thereinbefore referred. That the plaintiff herein is the sole and absolute owner of said tract of land subject to said contract, as well as the owner of said contract of purchase as above referred to.

PARAGRAPH NINTH.

That after said levy of said writs of attachment above referred to, which were issued on the 17th day of November, 1885, this plaintiff gave to the defendant the Merchant's National Bank of Tacoma notice in writing of her right in said premises, and demanded the release or relinquishment of said levies, or any of them; but on the contrary, after they were so notified, they proceeded to issue writs of attachment in each of said cases and caused the same to be levied on said property.

PARAGRAPH TENTH.

That said levies so made were wrongful and illegal, and were made solely for the purpose of annoying this plaintiff and hindering her in the free use of her property; that this plaintiff is now

suffering irreparable loss and damage in having said cloud on the title to said land, in the failure to sell said land or any part thereof.

Wherefore this plaintiff prays that the defendants may each of them be required to set forth the nature and extent of their respective claims, and that all adverse claims of the defendants, or either of them, may be determined by decree of this court; that by said decree it may be declared and adjudged that the defendant has no estate, interest or claim whatever in or to said land or premises, and that the title of plaintiff is good and valid; that the defendants be each and all forever barred and enjoined from asserting any claim whatever in or to said land or premises adverse to this plaintiff; and for such other relief as to the court shall seem meet and equitable, agreeable to equity in the premises, and for costs of suit.

E. P. CADWELL,
Attorney for Plaintiff.

TERRITORY OF WASHINGTON, } ss.
COUNTY OF PIERCE. }

I, H. P. Cadwell, being duly sworn, say that I am the plaintiff in the above-entitled action; that I have heard the foregoing complaint read; that I know the contents thereof; that the same are true, as I verily believe.

H. P. CADWELL.

Sworn to before me and subscribed to in my presence by the said H. P. Cadwell, this 1st day of March, 1886.

ALEX. CAMPBELL,
Justice of the Peace.

TERRITORY OF WASHINGTON, } ss.
COUNTY OF PIERCE. }

I, R. G. O'Brien, clerk of the district court holding terms at Tacoma, Pierce county, Washington Territory, do hereby certify that the foregoing is a full, true and correct copy of the complaint in this action, now on file in this office.

Witness my hand and the seal of said district court, this 20th day of April, 1886.

[SEAL.] R. G. O'BRIEN, *Clerk.*
By J. H. WILT, *Deputy Clerk.*

In the District Court of the Second Judicial District of Washington Territory, holding terms at Tacoma.

H. P. CADWELL, *Plaintiff*,

vs.

THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. VOTAW, ANNIE J. VOTAW, J. B. WING, JANE WING, ELIZABETH WING, THE MERCHANTS' NATIONAL BANK OF TACOMA, and MARIAH J. GALLIHER, *Defendants*.

ANSWER OF MARIAH J. GALLIHER.

To the Hon. John P. Hoyt, Judge of the above-entitled Court:

Comes now the above-named defendant, Mariah J. Galliher, and for answer to plaintiff's complaint she alleges as follows:

I.

She denies each and every allegation contained in the first paragraph of plaintiff's complaint.

II.

She denies each and every allegation contained in the third paragraph of plaintiff's said complaint.

III.

Defendant, for answer to paragraphs four (4), five (5), six (6), seven (7), nine (9), and ten (10) of said complaint, says that she has not sufficient knowledge or information as to the matters therein stated to form a belief, and therefore she denies the same and each and every allegation contained in each and all of said paragraphs.

IV.

Defendant, for answer to paragraph eight (8), admits upon information and belief, that within the year 1885 Henry L. Votaw and wife made and executed and delivered a warranty deed to E. P. Cadwell conveying the said tract of land, and that thereafter in the month of October, in the year 1885, a warranty deed conveying the said land was made, executed and delivered to this plaintiff, and denies each and every other allegation in said paragraph contained, and each and every part and the whole thereof.

V.

And for further answer and defense, and by way of affirmative relief and counter-claim, the defendant alleges:

First: That on the 2d day of May, A. D. 1852, one Silas Galliher, now deceased, and this defendant were lawfully married, and that thereafter and from thenceforth they lived together as husband and wife until the 18th day of April, A. D. 1873, when Silas Galliher died intestate.

Second: That on the 10th day of August, A. D. 1872, lot four (4) of section ten (10), township twenty (20), north of range three (3), east of Willamette meridian, was an unoccupied, surveyed and platted portion of the public domain of the United States and subject to homestead entry under and by virtue of the provisions of the laws of the United States at the local United States land office, at Olympia, W. T.

Third: That on the 10th day of August, A. D. 1872, the said Silas Galliher filed, as original entryman, at the United States land office at Olympia, Washington Territory, homestead entry No. 1615, for lot four (4), section ten (10), in township twenty (20), north of range three (3), east of the Willamette meridian, containing fifty-seven and one quarter (57¼) acres of land, under the act of congress approved May 20, 1862, and of March 1, 1864, and amendments thereto, entitled "An act to secure homesteads to actual settlers on the public domain," and paid the government fees and commissions thereon, and that he received a duplicate homestead receiver's receipt therefor, and settled upon, improved, cultivated and resided upon the said tract of land from the date of said entry until the date of his death.

Fourth: That after the death of her said husband this defendant remained in the sole, quiet and peaceable possession of said land, continuing her residence thereon and the cultivation and improvements until about the —— day of ——, A. D. 18—.

Fifth: That by and through mistake she neglected to make final proof on said homestead entry within the time prescribed by law, though she continued in possession of said land, and that on the 24th day of November, A. D. 1880, this defendant made application to the United States land office at Olympia, Washington Territory, to purchase said tract of land under the second section of the act of

congress, approved June 15, 1880, entitled "An act relating to the public lands of the United States," as the widow and heir of said Silas Galliher and on behalf of the heirs of said Silas Galliher, there being then and there no adverse claim thereon, and did then and there tender the purchase price in gold coin of the United States for said land as aforesaid, embraced in her deceased husband's homestead entry, together with the proofs and evidence of witnesses as required by the instructions of the commissioner of the general land office under and by said act of congress; that the said application was rejected by the register and receiver of said land office at Olympia, and that the defendant took an appeal from said decision so rejecting her application to purchase, to the commissioner of the general land office, who, through a mistake as to the construction of the law applicable to the case, sustained the decision of the register and receiver, and thereupon defendant appealed said cause to the secretary of the interior, who, through a mistake of the laws, wrongfully sustained the decision of the commissioner of the general land office.

Sixth: That after defendant had so, as aforesaid, applied to purchase said land, and during the time her said application was pending to the general land office before the commissioner and secretary of the interior, one Francis B. H. Wing made application to enter said tract of land under the act of congress entitled "An act for the sale of timber lands in the states of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as timber lands, and did make and perfect final proof thereupon the 20th day of December, A. D. 1881, per cash entry No. 6026, and that a patent therefor was issued to said Wing dated the 20th day of April, A. D. 1882.

Seventh: That the said Wing falsely and fraudulently made the statement under oath when he applied to enter said land that the said land is unfit for cultivation and chiefly valuable for its timber; that it is uninhabited and contained no improvements, and that these facts must appear in the sworn statement under the said act of June 3, 1878, before the title to any land can be acquired under said act; that at the time said statement was made said land was inhabited, and it then was and now is fit for cultivation and contained improvements, and that by reason of said false statements and frauds practiced upon the government the said Wing so, as aforesaid, acquired said patent to said land.

Eighth: That on the 25th day of September, 1884, and long prior thereto and ever since, the said John T. Baltzell, W. D. Tyler, Henry L. Votaw and Annie J. Votaw knew of the equity of the defendant and of her claims in and to said tract of land, and that on the 17th day of August, 1885, and long prior thereto and ever since, the said E. P. Cadwell and this plaintiff knew and had notice of the equities of the defendant and her rights and claims and that of the heirs in and to the land in the complaint described.

Ninth: That the pretended conveyances from the said Wing and his wife and heirs, the said Henry L. Votaw and his wife, and the said E. P. Cadwell, to this plaintiff concerning this land were made with full knowledge of this defendant's rights, equities and claims of, in and to said tract of land, and without any consideration therefor, and for the purpose of defeating and defrauding the defendant out of the same, and that the value of said land is —— thousand dollars.

Tenth: That defendant herewith brings into court the sum of one hundred forty-three and $\frac{13}{100}$ dollars, the amount of money paid by the said Wing to the United States government for the said tract of land, and now pays the same into the registry of this court to be paid to the party or parties entitled thereto by order of the court.

Wherefore, the defendant prays as follows, to wit:

First: That plaintiff may be decreed to hold the title to this land in trust for this defendant unto the heirs of Silas Galliher.

Second: That the said defendant, Mariah J. Galliher, and the heirs of Silas Galliher, deceased, be declared to be the equitable owners of said land, to wit: Lot four (4) of section ten in township twenty (20), north of range three (3) east of the Willamette meridian, and that plaintiff convey the same to this defendant by a good and sufficient deed by a day to be fixed, and in default thereof said lands to be conveyed by a commissioner appointed by the court.

Third: For such other and further relief as is equitable.

Fourth: For costs and disbursements.

NATHAN S. PORTER,
J. MUNROE ROBINSON,
JOSEPH W. ROBINSON,
JOHN P. JUDSON,
Attorneys for Defendant Mariah J. Galliher.

In the District Court of the Second Judicial District of Washington Territory, holding terms at Tacoma, in and for Pierce county.

H. P. CADWELL, *Plaintiff*,

vs.

THOMAS CARROLL, ANNIE J. CARROLL, HENRY L. VOTAW, ANNIE J. VOTAW, J. B. WING, JANE WING, ELIZABETH WING, THE MERCHANTS' NATIONAL BANK OF TACOMA, and MARIAH J. GALLIHER, *Defendants*.

To the Hon. John. P. Hoyt, Judge of the District Court, etc.:

Comes now the above-named plaintiff and, for reply to the answer of Mariah J. Galliher, states:

First: That she denies each and every allegation made and contained in paragraphs three, four, five, seven, eight, nine and ten of that part of defendant's answer in which he states facts constituting a cause for affirmative relief.

Second: That as to whether or not the statements made and contained in paragraphs first and second of that part of defendant's answer in which she states facts constituting a cause for affirmative relief, this plaintiff has not knowledge or information sufficient to form a belief, and hence denies the same.

Plaintiff further states that for other and complete defense to the affirmative matter set up in defendant's answer that on the 10th day of August, 1872, one Silas Galliher made a pretended homestead entry upon lot four (4), situated in section ten (10), township twenty (20) north, range three (3) east; that on the 4th day of December, 1879, said homestead entry was canceled by the United States law officers at Olympia, W. T., having charge of the land department in which the above tract of land was situated, after giving due and legal notice to said defendants of their intention so to cancel said pretended homestead entry, before such entry was canceled.

That said defendant had abandoned said land prior to the said cancellation, and has not been in possession of said land, or any

part thereof, at any time or portion of time since long prior to said cancellation, to wit, on or about June 25, 1874.

That long after said abandonment and cancellation of said homestead entry this defendant made application to the register and receiver of the United States land office at Olympia to purchase said tract of land; that said application was denied on the ground that this defendant did not come within the provisions of the second section of the act of June 15, 1880, she having no existing homestead right, the homestead right under which she claimed having been long since canceled, and on the ground that she had abandoned the land and was not in possession of the same; that upon appeal the general land commissioner at Washington, D. C., affirmed such ruling and decision so made; that upon appeal to the secretary of the interior the said secretary affirmed said ruling and decision and disallowed said application; that in affirming such decision he said:

"I have considered the appeal of Mariah J. Galliher, widow of Silas Galliher, deceased, from your decision of December 14, 1880, rejecting her application to purchase, under the second section of the act of June 15, 1880, lot No. 4, section 10, township 20, north, range 3, east, Olympia, W. T.

"It appears that this tract was embraced in the homestead entry of said Silas Galliher made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was canceled December 4, 1879, for want of final proof within the statutory provision of seven years, after due notice. It was competent for his widow to have perfected said entry after his death, under section 2291 of the revised statutes. This she failed to do, but abandoned the land, making no claim thereto until November 23, 1880, the date of her present application.

"The second section of the act of June 15, 1880, provides that 'persons who have heretofore, under any of the homestead laws, entered lands, properly subject to such entry, * * * may entitle themselves to such lands by paying the government price therefor.' * * *

"The purchase herein provided is in substitution of continued settlement and cultivation of five years required by the homestead laws, and relates to existing homestead rights. Even the husband of Mrs. Galliher, if living, would have no right of purchase under said act, because his entry has been canceled, and he would be a stranger to the land and to the record, and with no greater right thereto, during the continuance of such cancellation, than any other person. His widow can have no better right than he.

"It is not necessary to consider whether Mrs. Galliher may not make private entry of the tract under other laws, but clearly, in my opinion, under that of June 15, 1880, she has no right of purchase. Your decision is affirmed."

That this plaintiff and her grantor, E. P. Cadwell, and the previous owners of this land, to wit, H. D. Thomas, W. D. Tyler and John T. Baltzell, Henry L. Votaw and Annie J. Votaw, knew of said

decision and relied thereon, and that knowing and relying upon said decision and finding of said land department they have expended large amounts of money in improving and laying out said land in city lots, and have built valuable buildings and constructions thereon and have caused others so to do, and have made large and valuable improvements thereon, so that said land has been increased in value in at least the sum of twenty thousand dollars.

Wherefore this plaintiff prays judgment as heretofore prayed in her complaint.

E. P. CADWELL,
Attorney for Plaintiff.

TERRITORY OF WASHINGTON, } ss.
COUNTY OF PIERCE, }

I, H. P. Cadwell, being duly sworn say, that I am the plaintiff in the foregoing reply; that I know the facts therein stated; that they are true, as I verily believe.

H. P. CADWELL.

Sworn to before me and subscribed to in my presence by the said H. P. Cadwell, July 28, 1886.

ALEX. CAMPBELL,
Justice of the Peace.

Upon the trial in the district court it was held that appellant could acquire no title to the land after cancellation of entry, and upon appeal to the supreme court that decision was affirmed.

The following is the decision of the territorial supreme court (reported in 3d Washington Territory Reports at page 507):

"Mr. Justice Langford delivered the opinion of the court.

"This is a case wherein the appellee brought her suit in the district court against the appellant to quiet title to a certain tract of land.

"The appellee holds title by virtue of a patent from the United States to one Wing. The appellant claims that she was entitled to

enter the land under the homestead laws long prior to the entry and patent to Wing, which right she was deprived of by an erroneous decision of the land department of the United States, and hence is entitled to a decree against appellee, that he held the title in trust for her.

"It is conceded by admissions upon the argument that when this action was commenced appellee and others holding under the patent had improvements upon the tract of great value, and the tract and improvements thereon are worth about $20,000, and this is a test case to try the rights of all holding under the patent.

"It is further conceded that Silas Galliher, the husband of appellant, upon the 10th day of August, 1872, made a formal entry of the tract under the homestead act, and died about eight months thereafter, at Olympia, Washington Territory.

"The first point to be decided is whether this entry was made in good faith or was fraudulent from the beginning.

"At the time of the entry said Galliher and his wife had their domicile and home at Olympia, had property there and were engaged in keeping a hotel there. They had children and were educating them there. Olympia is forty miles from the tract of land in dispute. The tract of land consists of gravelly, barren land, covered with timber, adjoining the city of Tacoma. The husband, during his lifetime of about eight months after the entry, continued his residence and business at Olympia, and during that time had not done anything upon the land except cut down a few trees and a little brush, and lay a few logs for the foundation of a log cabin. There is no evidence that he moved to the land, or made any preparation to move there, or made any declaration of such intent.

"The character and small amount of land make it extremely improbable that any sane man could have intended at that time to move upon and cultivate this land for the purpose of making a farm out of it, as his home. His conduct and words gave no evidence of such intent; his failure to prepare a residence for more than six months, and failure to make any change in Olympia which would indicate that he intended to change his residence, are circumstances which satisfactorily show that at the time he made the formal entry he did not intend to reside upon and cultivate the land, as the homestead law requires. The intent must have been to

enter the land for speculation, either to use or sell the timber, or for some other purpose. The fact that the land was valuable only for timber, and that its value for all purposes was, some years after his entry, only about three dollars per acre, shows that he never intended to reside upon the land as his home, and farm and cultivate it. If his entry was made for any other purpose than this it was fraudulent and void, and no equity can be founded upon it.

"This is not a case of an originally valid entry afterwards abandoned, but of an originally void entry. The above considerations alone would be sufficient to prevent any holder of a legal title to be held a trustee for the fraudulent entryman.

"It is claimed that Wing, when he made application to enter the land under the timber act, had no notice of the Galliher equity.

"The notice claimed is that the appellant had made an application to enter the land at the United States land office, which had there been adjudicated against her; that she had filed notice of this in the auditor's office of the county wherein the land is situated; that he could have seen improvements made upon the land by appellant after her husband's death.

"1. Of the notice in the auditor's office it is sufficient to say that there was no law authorizing it; and it was not, therefore, implied notice, and there is no evidence that appellee or Wing ever saw it or heard of it.

"2. As to the log cabin and a little fencing rotting upon the land, and the clearing, if any, overgrown with pine timber, these did not tend to prove that the land had been occupied as a homestead, or occupied at all. The appearance of the land would rather indicate the presence of trespassers upon the public land to strip it of timber, which had been abandoned by them.

"3. As to the adjudication against the appellant in the land office, which was June 1, 1881, no doubt all parties had notice of this adjudication, and many of the reasons given therefor.

"The adjudication was, in effect, that the appellant had no right to enter the land, and that the land was public land of the United States subject to entry. This was a binding decision upon all parties until it was reversed; and, instead of being a notice that appellant had a right, it was a notice that she had no right. True, the reasons given for the decision might have been erroneous; but,

if they were, this did not tend to vitiate the decision itself. No doubt both the appellant and Wing supposed that the reasons given were correct law until long after Wing had received a patent.

"True, the affirmative plea that the appellee was an innocent purchaser, without notice, is not formally made; but each side, without objections, took evidence upon this point, and the case was submitted to the court below upon this evidence without objections to the form of the pleadings. Had the point been made in the court below, that court would rightly have disregarded it or ordered that the pleadings be amended to conform to the evidence. The want of an affirmative plea should have been disregarded in the court below, as it was, and will be disregarded here.

"The appellant knew of this decision and acquiesced in it until 1884, and long after patent had issued to Wing. She could not have applied to open the case, or had a rehearing until 1882, when the Miller case was decided. In the latter case the reasons for deciding the case of Galliher were disapproved.

"In the meantime, on the 20th of December, 1881, acting on the decision in the Galliher case, Wing applied to enter. In this application to enter the law requires a notice to be published to all the world of the intended entry. This notice describes the land that is to be entered, and states that it is to be entered because it is more valuable for timber than for agriculture. Appellant had this notice, but made no objection to Wing's entry in the United States land office, or elsewhere, until long after Wing had obtained his patent and paid his money. The patent was issued to him April 20, 1881.

"The adjudication that this was unoccupied public land more valuable for timber than for anything else, was the foundation of the patent. This adjudication was binding upon all private parties, and upon the appellant among them; and after this judgment by default the appellant cannot relitigate the question.

"In 1884 the appellant applied to the general land office to be allowed to enter. That office wrote her of the above ajudications in that office and that they were final. From this time the appellant never attempted to set up any claim until she answered in this action. In the meantime the property had been laid out in town lots and valuable improvements put upon them; and after this appellant first makes known that she had a claim, and insists upon it.

If she had had a right, which she had not, and had permitted those sales and improvements without notice, she could not now assert a right, but would be estopped from so doing. If she were not so estopped she would have to tender price paid to appellee and the costs of the improvements before she could ask a court of equity to help her. Instead of this she does not offer to pay anything except the government price, which would be only a few cents.

"The evidence that appellant attempted to perfect her claim by improving the land prior to 1876, if her evidence were conclusive of her *bona fides*, would not avail her, for the original entry, being fraudulent and void, could not be perfected. The evidence is far from showing that she ever intended this claim for her home or farm. It rather discloses the fact that she continued to reside at Olympia, making occasional visits to the land for speculative purposes. No improvements made under such circumstances could, in any way, give her a right, or perfect a right.

"Wing never, by any act of his, prevented appellant from perfecting her claim in the land department. He misled that department neither as to law nor fact.

"Hence this case is not similar to any case cited wherein a patentee was held trustee for another. The equities are as strong in favor of Wing as in favor of appellant, and, were he a party, his legal title would prevail.

"Much stronger are the equities of appellee, and for this reason the conclusion is still stronger that appellee's title shall prevail.

"Let the judgment be affirmed."

LAW UNDER WHICH APPELLANT CLAIMS TITLE.

The appellant bases her title to the land upon section two of the act of congress approved June 15, 1880, entitled, "An act relating to the public lands of the United States," which reads as follows:

"That persons who have heretofore, under any of the homestead laws, entered lands properly subject to such entry, or per-

sons to whom the right of those having so entered for homesteads may have been attempted to be transferred by *bona fide* instrument in writing, may entitle themselves to said lands by paying the government price therefor, and in no case less than one dollar and twenty-five cents per acre, and the amount heretofore paid the government upon said lands shall be taken as part payment of said price.

"*Provided*, This shall in no wise interfere with the rights or claims of others who may have subsequently entered such lands under the homestead laws."

It is self-evident that this law was passed to enable two classes of persons to acquire public lands by purchase from the United States.

First: Those who, prior to the enactment of the law, entered land under any of the homestead laws, where such land was properly subject to such entry.

Second: Those who attempted by purchase, to acquire title from the entryman, before he had any right to convey.

The only limitation to the aquisition of title under this act by these two classes of persons is that the right to purchase shall not interfere with the rights or claims of others who may have subsequently entered the lands under the homestead laws.

The right to purchase land under this act therefore exists without limitation to the two classes of persons named, except only in those cases where others may have filed on the same land under the homestead law.

ADMITTED FACTS.

In this case it is admitted:

1. That the husband of appellant, Silas Galliher, made a homestead entry on the land in question on the 10th day of August, 1872; that he paid the fees required to be paid, and received the usual homestead receipt from the local land office.

2. That at the time of making such entry the land described therein was vacant, unappropriated public land, and subject to homestead entry.

3. That Galliher entered upon the land, made some clearing, laid the foundation for a house, and that he died on the 13th day of April, 1873, some eight months after making his filing.

4. That appellant, three months after her husband's death, moved with her family to the homestead, completed the house which her husband had commenced, and expended four hundred dollars on improvements on the land.

5. That in 1876 appellant left the homestead because her money was all gone and she could not support her family on the land.

6. That the homestead entry so made by said Galliher, was canceled by the land department on December 4, 1879, because no final proof was made.

7. That on November 23, 1880, the appellant filed with the register and receiver of the land office at Olympia her application to purchase said tract of land under the provisions of the aforesaid act of congress, tendering the government price for the land, together with all fees and commissions charged, and that when she so applied to enter the land that there was no adverse claim to the same.

8. That her application to so purchase the land was rejected upon the ground that the cancellation of the homestead entry of her deceased husband cut off her right to purchase under the aforesaid act of congress.

9. That she took an appeal from said decision to the commissioner of the general land office, who affirmed the decision of the register and receiver, and that thereafter she took an appeal to the secretary of the interior, who affirmed the decision of the commissioner, denying appellant's right to purchase the land upon the ground that her husband, if living, could not purchase the land under the aforesaid act of congress, after the cancellation of the entry, and that she, as his widow, could have no better right.

10. That while this, the said widow's application to purchase this land, was so pending before the secretary on appeal, and on December 20, 1881, F. B. H. Wing, under whom appellee claims title, entered the land under the act

of congress, approved June 3, 1873, entitled "An act for the sale of timber lands, etc."

That the appellee, and all persons under whom she claims title, had notice of the right, title and interest of appellant in and to this land before they purchased the same.

ARGUMENT.

I.

It being admitted that this land was entered under the homestead laws; that the land was properly subject to such entry; that no other person had applied to purchase the same, and that the entryman, the husband of appellant, was dead, she, as his widow, had the absolute right to purchase the same unless there was a failure to comply with the terms and conditions of the act under which the application to purchase was made.

II.

To determine whether the terms and conditions under which land may be acquired under this act, the act itself, and by itself, must be construed, inasmuch as it provides a new method of acquiring title to public lands. The old laws may be looked to for definition of words used, but the act under consideration, alone and by itself, contains the conditions precedent upon which the acquisition of title depends.

No better authority on this proposition can be produced than the construction placed upon the law by that department of the government which administers the law in the instructions to the officers of this department. Under date

of October 1, 1880, on page 17 of the general land office circular, it is said:

"With respect to the class of homestead entries made prior to the 15th of June, 1880, the act of congress, that day approved (copy attached, No. 16) provides another method for acquiring title to the land by purchase. Under section 2 duly qualified persons who, prior to June 15, 1880, entered, under any of the homestead laws, lands properly subject to such entry, are permitted to obtain title by paying the government price, less the fees and commissions paid thereon.

"In allowing entries of this class the district officers will require proof that the party was twenty-one years of age, or the head of a family; was a citizen, or had declared his intention to become a citizen of the United States, and was in other respects entitled to make the entry."

Under these instructions proof must show:

1. A homestead entry made by a qualified person, prior to June 15, 1880.

2. That the land so entered was properly subject to be so entered.

3. That the party was twenty-one years of age, or the head of a family.

In this case appellee admits that the foregoing facts existed in favor of appellant, and the record shows that she offered to pay the government price for the land, thus completing her right to purchase.

To the facts, so here admitted, it is urged that while it is true the widow had this right, yet she lost it when she failed to make this application before the cancellation of her husband's homestead entry, and we are cited to the

opinion of the secretary of the interior rejecting appellant's application to purchase this land.

After the rendition of this decision, in the next case coming before the interior department, Secretary Teller repudiated the doctrine laid down in the case wherein appellant was not allowed to purchase the land in controversy in this action, and held that the cancellation of the entry did not affect the right to purchase the land.

See the case of *John W. Miller*, vol. 9, Copp's Land Owner, page 57.

And it is now held that the voluntary relinquishment of an entry does not destroy the right to purchase the land under the provisions of the aforesaid act of congress.

See the case of *George S. Bishop*, 9 Copp's Land Owner, page 95.

See also the case of *Samuel Mitchell*, 10 Copp's Land Owner, page 36.

In the case last cited it is expressly held that the cancellation of the entry does not destroy the right to purchase.

On the 18th day of April, 1885, Mr. Secretary Lamar, in the case of *Northern Pacific Railroad Company vs. Burt*, for the first time construed the act of congress now under consideration. In this case the secretary expressly affirmed the decision in the *Miller* case, holding that Burt had the right to purchase after the cancellation of his entry, and that this right to so purchase inures to the widow of the entryman.

12 Copp's Land Owner, pages 138 and 139.

July 11, 1885, acting Secretary Muldrow announces the same doctrine.

Simpson vs. Foley, 12 Copp's Land Owner, page 131.

On the 27th day of March, 1886, in the case of *Gilbert vs. Spearing*, Mr. Secretary Lamar passed upon the question here involved, and affirmed his previous decision.

13 Copp's Land Owner, pages 30 and 31.

One year later, March 28, 1887, Acting Secretary Muldrow, in the case of *Northern Pacific Railroad Co. vs. McLean*, passed upon the same question, reaffirming the previous decision of the department.

14 Copp's Land Owner, page 75.

And again on March 31, 1887, in the case of *George E. Sanford.*

14 Copp's Land Owner, page 89.

So well is the construction of this act of congress settled by these decisions that no one now can be found to question the conclusion reached.

But to the supreme court of Washington Territory must be accredited the honor of finding a new method of nullifying this act of congress. The rights of the appellant are made, by the decision of that court, to depend on showing a compliance with the provisions of the general homestead laws. Such a construction of the act of June 15, 1880, would lead to an absurdity, inasmuch as those persons who could show a compliance with the homestead

laws needed no additional legislation to acquire title to their lands. They could acquire title without even paying for the land, or they could commute and pay for it.

If, therefore, the construction of the territorial supreme court is correct, congress enacted a law conferring rights then already existing. It was not the intention of congress, this court says, to grant relief to those persons who failed to comply with the law, *but only to relieve those who had so complied with the law*, for if you are compelled to show that you have complied with the homestead laws before you are entitled to purchase under the act of June 15, 1880, the conclusion must be conceded to be correct *that this act was passed to enable persons to acquire title to land who required no aid and no assistance to acquire such title.*

It will not be held that congress attempted such a vain and superfluous thing, especially where the act in question clearly and without qualification provides the acquisition of title to land in two classes of cases *where the right to a homestead has been forfeited under the homestead laws*, in the first place, by a failure to reside upon the land and improve the same, and in the second place by an attempted transfer of the land.

And this construction of the act of June 15, 1880, is in harmony with the decision of the interior department.

Bray vs. Colby, 9 Copp's Land Owner, page 116.

The interior department says that the act of June 15, 1880, was passed for the express purpose of enabling

claimants, *in the absence of a compliance with the law*, to acquire title to the land by a payment of cash therefor.

Commissioner McFarland, in the case of *August Smith*, 10 Copp's Land Owner, page 104.

The territorial court next attempts to show that the entry was not made in good faith — that it was fraudulent from the beginning.

In the attempt to show a want of good faith the court, it would seem, overlooked the fact that title was here claimed under the act of June 15, 1880, and that their conclusions were based upon the want of good faith and failure to comply with the general homestead laws.

The court says that "he did not establish his residence on the land." We answer that it was not necessary.

"The tract of land consists of gravelly, *barren* land, covered with timber, adjoining the city of Tacoma." We answer that "gravelly, barren land" may be entered under the homestead acts.

"The husband, during his life time, for about eight months after entry, continued his residence at Olympia." He only "cut down a few trees and a little brush and laid the foundation for a log cabin." The record shows (evidence of Mrs. Galliher) that he was sick for one year before he died, and we say that as between him and the government no advantage will be taken of his sickness, and appellant's rights must here be determined upon the facts and law as they existed when she applied to purchase this land.

"The character and small amount of land make it extremely improbable that any sane man could have intended at that time to move upon and cultivate the land * * * as his home." We answer that the entryman had foresight enough to see that the "character of this land" and "small amount" would be worth thousands of dollars by reason of its nearness to the city of Tacoma. We have yet to learn that good faith depends either on the quantity or quality of the soil.

"The intent must have been to enter the land for speculation, either to use or sell the timber, or for some other purpose." We submit our inability to discover the want of good faith where the land is entered for "speculation" or "*for some other purpose.*"

We have so far set out the reasoning of the territorial supreme court upon which the conclusions were reached that the entry was fraudulent, not because such reasoning needed refutation, but to show the error of the court in deciding this case upon decisions construing the provisions of the general homestead laws, and ignoring the decisions giving a construction to the act of congress under consideration.

The rule has been established that cash entry may be made under the second section of the act of June 15, 1880, although entry may have been void at its inception.

See case of *George W. Maughn*, 9 Copp's Land Owner, page 56.

Counsel for appellee have not produced or cited one single case decided since the passage of the act of June 15, 1880, supporting their views, which has not been reversed, and have placed their sole reliance upon the failure of the entryman to comply with the general homestead law, which law has no application here.

Neither failure to reside upon the land after homestead entry has been made, nor abandonment after residence, constitute fraud. Defects in the entryman's original affidavit which would justify the cancellation of the entry under the homestead laws does not destroy the right to purchase the land under the act of June 15, 1880.

August Smith, 10 Copp's Land Owner, page 104.

George W. Maughn, 9 Copp's Land Owner, page 56.

James Harvey, 9 Copp's Land Owner, page 57.

For a correct exposition of the law of this case we refer to the dissenting opinion of Mr. Justice Turner.

Galliher vs. Cadwell, 3 Washington Territory, 512.

The widow of the entryman has the right to purchase under the act of June 15, 1880.

Northern Pacific Railroad Co. vs. Mrs. McLean
14 Copp's Land Owner, page 75.

Wm. H. White, 9 Copp's Land Owner, page 57.

And on October 4, 1888, Assistant Secretary Muldrow decides, in the case of *Alonzo Swink*, that a contest against his entry by the government will not defeat the right of purchase granted by this act.

15 Copp's Land Owner, page 177.

Secretary Vilas on January 17, 1889, in the case of *Campbell vs. Kelley*, decided that "Land entered under the homestead law prior to the passage of the act of June 15, 1880, may be purchased under the second section thereof, on the payment of the government price, if free from adverse claims," and an intervening entry canceled on relinquishment is no bar to the right of purchase.

16 Copp's Land Owner, page 53.

On May 29, 1889, Secretary Noble decides, in case of *Nathaniel Banks* (on review), that a purchase under section 2 of the act of June 15, 1880, is not a consummation of the original homestead entry, operating by relation from the date of such entry, but a private entry operative from the date thereof.

16 Copp's Land Owner, page 74.

On November 20, 1890, Assistant Secretary Chandler, in the case of *John E. Williams*, affirms the above doctrine.

17 Copp's Land Owner, page 220.

The right of the appellant to purchase the land being sustained by every authority, her rights are as much protected as if her application to purchase had actually been allowed.

When the legal title has passed from the United States to one party, when, in equity and good conscience and the laws of congress, it ought to go to another, a court of equity will convert the holder of the legal title into a trustee of the true owner, and compel him to convey the legal title.

This doctrine extends to all officers having charge of proceedings for the alienation of any portion of the public domain.

The party actually entitled to the land under the law cannot, because of misconstruction of the laws by these officers, be deprived of their rights.

Rector vs. Gibbons, 111 United States Supreme Court, 291.

Townsend vs. Greeley, 5 Wallace, 326 to 335.

Carpenter vs. Montgomery, 13 Wallace, 480.

Shepley vs. Cowan, 91 United States Supreme Court, 330.

Moore vs. Robbins, 96 United States Supreme Court, 530.

Quimby vs. Conlan, 104 United States Supreme Court, 420.

St. Louis Smelting Co. vs. Kemp, 104 United States Supreme Court, 636.

Johnson vs. Towsley, 13 Wallace, 80.

Lee vs. Johnson, 116 United States Supreme Court, page 48.

Widdicombe vs. Childers, 124 United States Supreme Court, page 400.

Appellant's right to purchase this land, when she applied to do so, is no longer questioned, inasmuch as the decision rejecting her application from that time to this is now admitted to have been made under misapprehension of the law.

This, therefore, is a case coming clearly within the rule laid down by this court where relief should be granted.

Appellee took her title with actual notice of the equities of appellant. In the last paragraph of her reply she expressly avers that she, and those under whom she claims title, had all had notice of the right, title and interest of appellant.

It is, therefore, unnecessary to consider her title, as she holds the legal title only as a trustee for the appellant.

J.W.ROBINSON

Attorney for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 163.

MARIA J. GALLIHER, Appellant,

vs.

H. P. CADWELL.

Appeal from the Supreme Court of the late Territory of Washington.

Brief and Argument on Part of Appellee.

JOHN H. MITCHELL,
Attorney for Appellee.

Press of McGill & Wallace, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

MARIA J. GALLIHER, Appellant,
vs.
H. P. CADWELL.
No. 265.

Appeal from the Supreme Court of the Territory of Washington.

STATEMENT OF CASE.

This is an appeal from a decree rendered in a suit in equity in the Supreme Court of the late Territory of Washington, in favor of H. P. Cadwell, appellee, who was plaintiff in the court below, and against Mariah J. Galliher, the appellant, and others.

STATEMENT OF CASE.

The plaintiff in the court below, Mrs. H. P. Cadwell, is the successor in interest to the legal title of the tract of land described in the complaint. The tract includes about 57 acres of land and is located within what is known as "Votaw's Addition to the City of Tacoma," and the same has long since been, or the most thereof, laid off in streets, blocks, and lots, many of which lots are built upon and occupied by various parties holding under plaintiff.

The suit was instituted in the District Court of the Second Judicial District of Washington Territory, holding terms at Tacoma in and for Pearce County, against the following-named defendants: Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, and the appellant, Mariah J. Galliher, the purpose of the suit being to discover the nature and extent of the respective claims of the defendants to such property—they or the most of them having made some claim thereto—and for the purpose of cancelling all adverse claims to the property in question, and removing all clouds therefrom, and to confirm the title of plaintiff as against all such claims, and to enjoin the defendants and each of them from asserting any claim whatever in or to said described premises adverse to plaintiff, and for such other relief as to the court should seem meet and equitable, agreeable to equity in the premises.

The complaint is brief and is as follows:

Complaint.

In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma, in and for Pierce County.

H. P. Cadwell, Plaintiff, *v.* Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, Mary J. Galliher, Defendants.	Complaint.

To the Honorable John P. Hoyt, Judge of the District Court, etc.:

Humbly complaining, comes now the above-named plaintiff and, for cause of action against the above-named defendants, states:

Paragraph 1st.

That she is now and has been for a long time past in the quiet possession and the sole and absolute owner of that certain tract or parcel of land situated and lying in the county of Pierce, Washington Territory, and being more particularly bounded and described as follows, to wit:

All those certain lots or parcels of lots or land situated in the city of Tacoma, said county and Territory, comprising what is now known and designated as Votaw's addition to the said city of Tacoma, as the same is filed and recorded in the office of the auditor of the county of Pierce aforesaid, and being situated and laid out upon lot 4, of section ten (10), in township twenty (20) north, of range three (3) east, of the Willamette meridian, and containing fifty-seven and ¼ acres of land.

Paragraph 2d.

That the said plaintiff claims title to the said premises, and that the said defendants, Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, and Mary J. Galliher, have or pretend to have some claim or estate or interest therein or lien thereon adverse to the said plaintiff.

Paragraph 3d.

That the claim of said defendants is without any right whatever, and that the said defendants nor either of them have not any estate, right, title, or interest whatever in said land or premises or any part or parcel thereof.

Paragraph 4th.

That said property is not community property; that said property is the separate property of this plaintiff, acquired by gift and purchase with money belonging to this plaintiff in her own right and stead before her marriage, in the years 1879 and 1883.

That said defendant, Henry L. Votaw, nor one E. P. Cadwell, have any right, title, or interest, or estate in or to any part of said tract of land.

Paragraph 5th.

That on the 17th day of November, 1885, the defendant herein, The Merchants' National Bank, commenced a certain suit in this court against one E. P. Cadwell, and others, and in said suit sued out a writ of attachment on the same day, and that under and by virtue of said writ of attachment the sheriff of Pierce County, to whom the same was directed, levied the same upon the premises herein described on the 16th day of December, 1885; that in the same suit said defendants did on the 29th day of January, 1886, sue out of this court another writ, and the sheriff of this county did, under and by virtue thereof, on the 4th day of February, 1886, cause the same to be levied on the said premises as the property of the defendant herein, Henry L. Votaw, and said E. P. Cadwell.

Paragraph 6th.

That on the 17th day of November, 1885, the defendant, The Merchants' National Bank of Tacoma, commenced another suit in this court against said E. P. Cadwell and the defendant herein, Henry L. Votaw; that on the same day the sheriff of said county of Pierce, W. T., to whom the same was directed, levied said writ on the land herein described as the property of said defendant, Henry L. Votaw, and said E. P. Cadwell; that on the 4th day of February, 1886, said defendant caused another writ of attachment to issue in said case, and on the same day the sheriff of Pierce County, to whom the same was directed, levied the same writ on said premises as the property of said defendant, Henry L. Votaw, and said E. P. Cadwell.

Paragraph 7th.

That said attachment remains upon the records of this county as liens against said property.

Paragraph 8th.

That on the 25th day of September, 1884, the defendant, Henry L. Votaw, and Annie J. Votaw made and entered into a contract of sale of said premises with John

T. Baltzell and W. D. Tyler, wherein it was agreed, among other things, that the said Henry L. Votaw should retain the title to said land and make and execute deeds of conveyance whenever requested so to do by the said Tyler and Baltzell; that all the proceeds of said real estate should be applied upon the payment of the purchase price of said land; that on the 17th day of August, 1885, said tract of land was conveyed by warranty deed by said Henry L. Votaw and wife, Annie J. Votaw, to one E. P. Cadwell in trust for this plaintiff; that at the same time said contract was assigned to said E. P. Cadwell in trust for this plaintiff.

That on the 15th day of October said tract of land was conveyed by warranty deed and said contract was assigned in writing to this plaintiff *in personem* and for the purpose of carrying out the trust above stated as thereinbefore referred; that the plaintiff herein is the sole and absolute owner of said tract of land, subject to said contract, as well as the owner of said contract of purchase as above referred.

Paragraph 9th.

That after said levy of said writs of attachments above referred to, which were issued on the 17th day of November, 1885, this plaintiff gave to the defendant, The Merchants' National Bank of Tacoma, notice in writing of her right in said premises and demanded the release or relinquishment of said levies or any one of them, but, on the contrary, after they were so notified they proceeded to issue writs of attachments in each of said cases and caused the same to be levied upon said property.

Paragraph 10th.

That said levies so made were wrongful and illegal and were made solely for the purpose of annoying this plaintiff and hindering her in the free use and control of her property; that this plaintiff is now suffering irreparable loss and damage in having said cloud upon the title of said land in the failure to sell said land or any part thereof.

Wherefore this plaintiff prays that the defendants may each of them be required to set forth the nature and ex-

tent of their respective claims, and that all adverse claims of the defendants or either of them may be determined by a decree of this court; that by said decree it may be declared and adjudged that the defendant has no estate or interest or claim whatever in or to said land or premises, and that the title of plaintiff is good and valid.

That the defendants be each and all forever barred and enjoined from asserting any claim whatever in or to said land or premises adverse to this plaintiff, and for such other relief as to the court shall seem meet and equitable, agreeable to equity in the premises, and for costs of suit.

E. P. CADWELL,
Attorney for Plaintiff.

TERRITORY OF WASHINGTON, } ss:
County of Pierce. }

I, H. P. Cadwell, being duly sworn, say that I am the plaintiff in the above-entitled action; that I have heard the foregoing complaint read; that I know the contents thereof; that the same are true as I verily believe.

H. P. CADWELL.

Sworn to before me and subscribed to in my presence by the said H. P. Cadwell this 1st day of March, 1886.

ALEX. CAMPBELL,
Justice of the Peace.

(Record, 68–71).

To this complaint the defendant, Mariah J. Galliher, interposed her separate answer (Record, 71–74), which is as follows:

Answer of Mariah J. Galliher.

In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. Cadwell, Plaintiff, *vs.* Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, and Mariah J. Galliher, Defendants.	Answer of Mariah J. Galliher.

To the Honorable John P. Hoyt, judge of the above-entitled court:

Comes now the above-named defendant, Mariah J. Galliher, and for answer to complainant's complaint she alleges as follows:

I.

She denies each and every allegation contained in the first paragraph of plaintiff's complaint.

II.

She denies each and every allegation contained in the third paragraph of plaintiff's said complaint.

III.

Defendant, for answer to paragraphs number four (4), five (5), six (6), seven (7), nine (9), and ten (10) of said complaint, says that she has not sufficient knowledge or information as to the matters therein stated to form a belief, and therefore she denies the same and each and every allegation contained in each and all of said paragraphs.

IV.

Defendant, for answer to paragraph eight (8), admits, upon information and belief, that within the year

1885, Henry L. Votaw and wife made and executed and delivered a warranty deed to E. P. Cadwell, conveying the said tract of land, and that thereafter, in the month of October, in the year 1885, a warranty deed, conveying the said land, was made and executed and delivered to this plaintiff; and denies each and every other allegation in said paragraphs contained, and each and every part and the whole thereof.

V.

And for further answer and defense, and by way of affirmative relief and counter-claim, the defendant alleges:

1. First. That on the — day of ——, A. D. 18—, one Silas Galliher, now deceased, and this defendant were lawfully married, and that thereafter and from thenceforth they lived together as husband and wife until the 18th day of April, A. D. 1873, when said Silas Galliher died intestate.

2. Second. That on the 10th day of August, A. D. 1872, lot four (4), of section ten (10), township twenty (20) north, of range two (2) east, of Willamette meridian, was an unoccupied, surveyed, and platted portion of the public domain of the United States and subject to homestead entry, under and by virtue of the provisions of the laws of the United States, at the local United States Land Office at Olympia, W. T.

3. Third. That on the 10th day of August, A. D. 1872, the said Silas Galliher filed, as original entryman, at the United States Land Office at Olympia, Washington Territary, homestead entry No. 1615, for lot four (4), of section ten (10), in township twenty (20) north, of range two (2) east, of the Willamette meridian, containing fifty-seven and one-quarter (57¼) acres of land, under the acts of Congress approved May 20, 1862, and March 21, 1864, and amendments thereto, entitled "An act to secure homesteads to actual settlers on the public domain," and paid the Government fees and commissions thereon, and that he received a duplicate homestead receiver's receipt therefor and *settled upon, improved, cultivated, and resided* upon the said tract of land *from the date of said entry until the date of his death.*

4. Fourth. That after the death of her said husband this defendant remained in the sole, quiet, and peaceable

possession of said land, continuing her residence thereon and the cultivation and improvements until about the—day of ——, A. D. 18—.

5. Fifth. That by and through mistake she neglected to make final proof on said homestead entry within the time prescribed by law, though she continued in possession of said land, and that on the 24th day of November, A. D. 1880, this defendant made application at the United States Land Office at Olympia, Washington Territory, to purchase said tract of land, under the second section of the act of Congress approved June 15th, 1880, entitled "An act relating to the public land of the United States," as the widow and heir of said Silas Galliher and on behalf of the heirs of said Silas Galliher, there being then and there no adverse claims thereto, and did then and there tender the purchase price, in gold coin of the United States, for the said land as aforesaid embraced in her deceased husband's homestead entry, together with the proofs and evidence of witnesses, as required by instructions of the Commissioner of the General Land Office under said act and by said act of Congress; that the said application was rejected by the register and receiver of the said land office at Olympia, and that the defendant took an appeal from the said decision so rejecting her application to purchase to the Commissioner of the General Land Office, who, through mistake as to the construction of the laws applicable to the case, sustained the decision of the register and receiver, and that thereupon defendant appealed said cause to the Secretary of the Interior, who, through mistake of the law, wrongfully sustained the decision of the Commissioner of the General Land Office.

6. Sixth. That after the defendant had so as aforesaid applied to purchase said land and during the time her said application was pending in the General Land Office, before the Commissioner and the Secretary of the Interior, one Francis B. H. Wing made application to enter said tract of land under the act of Congress entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," approved June 3, 1878, as timber lands, and did make and perfect final proof thereon the 20th day of December, A. D., 1881,

per cash entry No. 8026, and that a patent therefor was issued to said Wing, dated the 20th day of April, A. D., 1882.

7. Seventh. That the said Wing falsely and fraudulently made the statement under oath, when he applied to enter said land, that the said land "is unfit for cultivation and valuable chiefly for its timber; that it is uninhabited and contains no improvements;" that these facts must appear in the "sworn statement," under the said act of June 3, 1878, before title to any land can be acquired under said act; that at the time said statement was made said land was inhabited, and it then was and now is fit for cultivation, and contained improvements, and that by reason of said false statements and fraud, as practiced upon the Government, the said Wing so as aforesaid acquired said patent to said land.

8. Eighth. That on the 25th day of September, A. D. 1884, and long prior thereto and ever since, the said John F. Baltzell, W. D. Tyler, Henry L. Votaw, and Annie J. Votaw knew of the equity of the defendant and of her claims in and to said tract of land, and that on the 17th day of August, 1885, and long prior thereto and ever since, the said E. P. Cadwell and this plaintiff knew and had notice of the equities of the defendant and of her right and claim and that of the heirs in and to the land in the complaint described.

9. Ninth. That the pretended conveyances from the said Wing and his wife and heirs, the said Henry L. Votaw and his wife, and the said E. P. Cadwell to this plaintiff, covering this land, were made with full knowledge of this defendant's rights, equities, and claims of, in, and to said tract of land and without any consideration therefor and for the purpose of defeating and defrauding this defendant out of the same, and that the value of said land is—thousand dollars.

10. Tenth. That defendant herewith brings into court the sum of $143.13, the amount of money paid by the said Wing to the U. S. Government for said tract of land, and now pays the same into the registry of this court, to be paid to the party or parties entitled thereto by order of the court.

Wherefore the defendant prays as follows, to wit:

1st. That plaintiff may be decreed to hold the title

to this land in trust for this defendant and the heirs of Silas Galliher.

2d. That the said defendant, Maria J. Galliher, and the heirs of Silas Galliher, deceased, be declared to be the equitable owners of said land, to wit:

Lot four (4), of section ten (10), in township twenty (20) north, of range two (2) east, of Willamette meridian, and that plaintiff convey the same to this defendant by a good and sufficient deed by a day to be fixed, and in default thereof said lands to be conveyed by a commissioner appointed by the court.

3d. For such other and further relief as is equitable.

4th. For costs and disbursements.

NATHAN S. PORTER,
J. MUNROE ROBINSON,
JOSEPH W. ROBINSON,
JOHN P. JUDSON,
Attorneys for Defendant Mariah J. Galliher.

[Endorsed:] In the district court, holding terms at Tacoma, W. T. H. P. Cadwell, plaintiff, *v.* Thomas Carroll *et al.*, defendants. Copy. Answer. Porter & Robinson, J. W. Robinson, and J. P. Judson, attorneys for defendant, Mariah J. Galliher. (Record, 71–74.)

This answer does not seem to have been verified either by the defendant, Galliher, or any one else.

To this answer plaintiff, Cadwell, interposed a reply (Record, 75), of which the following is a copy:

Replication.

In the District Court of the Second Judicial District of Washington Territory, Holding Terms at Tacoma.

H. P. Cadwell, Plaintiff,
vs.
Thomas Carroll, Annie J. Carroll, Henry L. Votaw, Annie J. Votaw, J. B. Wing, Jane Wing, Elizabeth Wing, The Merchants' National Bank of Tacoma, and Mariah J. Galliher, Defendants.

Comes now the above-named plaintiff and for reply to the answer of Mariah J. Galliher states:

First. That she denies each and every allegation made and contained in paragraphs three, four, five, seven, eight, nine, and ten of that part of defendant's answer in which she states facts constituting a cause for affirmative relief.

Second. That as to whether or not the statements made and contained in paragraphs first, second, of that part of defendant's answer in which she stated facts constituting a cause for affirmative relief, this plaintiff has not knowledge or information sufficient to form a belief, and hence denies the same.

Plaintiff further states that for other and complete defense to the affirmative matter set up in defendant's answer that on the 10th day of August, 1872, one Silas Galliher made a *pretended* homestead entry upon lot four (4), situated in section ten (10), township twenty north, range three (3) east; that on the 4th day of December, 1879, said homestead entry was cancelled by the United States officers at Olympia, W. T., having charge of the land department in which the above tract of land was situated, after giving due and legal notice to said defendant of their intention so to cancel said pretended homestead entry before such entry was cancelled.

That said defendant had abandoned said land long prior to the said cancellation, and has not been in possession of said land or any part thereof at any time or portion of time since long prior to said cancellation, to wit, since on or about June 25, 1874.

That long after said abandonment and cancellation of said homestead entry this defendant made application to the register and receiver of the U. S. Land Office at Olympia to purchase said tract of land; that said application was denied on the ground that this defendant did not come within the provision of the second section of the act of June 15th, 1880, she having no existing homestead right, the homestead right under which she claimed having been long since cancelled, and on the ground that she *had abandoned the land and was not in possession of the same;* that upon appeal the General Land Commissioner, at Washington, D. C., affirmed said ruling and decision so made; that upon appeal to the Secre-

tary of the Interior the said Secretary affirmed said ruling and decision and disallowed said application; that in so affirming said decision he said:

"I have considered the appeal of Mariah J. Galliher, widow of Silas Galliher, deceased, from your decision of December 14th, 1880, rejecting her application to purchase, under the second section of the act of June 15th, 1880, lot No. 4, section 10, t'w'p 20 N., R. 3 E., Olympia, W. T."

It appears that this tract was embraced in the homestead entry of said Silas Galliher, made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was cancelled December 4, 1879, for want of final proof within the statutory period of seven years, after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, *but abandoned the land*, making no claim thereto until November 23, 1880, the date of her present application.

The second section of the act of June 15, 1880, provides "that persons who have heretofore, under any of the homestead laws, entered lands properly subject to such entry * * * may entitle themselves to such lands by paying the Government price therefor." * * *

"The purchase herein provided is in substitution of the continued settlement and cultivation of five years required by the homestead laws and relates to existing homestead rights. Even the husband of Mrs. Galliher, if living, would have no right of purchase under said act, because his entry has been cancelled, and he would be a stranger to the land and to the record, and with no greater right thereto during the continuance of such cancellation than any other person. His widow can have no better right than he.

"It is not necessary to consider whether Mrs. Galliher may now make private entry of the tract under other laws; but, clearly, in my opinion, under that of June 15, 1880, she has no right of purchase. Your decision is affirmed."

That this plaintiff and her grantor, E. P. Cadwell, and the previous owners of this land, to wit, H. D. Thomas, W. D. Tyler, and John T. Baltzell, Henry L. Votaw, and Annie J. Votaw, *knew of said decision and relied thereon*,

and that *knowing* and *relying upon said decision* and *finding* of said Land Department, *they have expended large amounts of money in improving and laying out said lands in city lots*, and have built valuable buildings and constructions thereon and have caused others so to do, and have made large and valuable improvements thereon, so that said land has been increased in value in at least *the sum of twenty thousand dollars.*

Wherefore this plaintiff prays judgment as heretofore prayed in her complaint.

E. P. CADWELL,
Attorney for Plaintiff.

TERRITORY OF WASHINGTON, }
County of Pierce. }

I, H. P. Cadwell, being duly sworn, says that I am the plaintiff named in the foregoing reply; that I know the facts therein stated; that they are true as I verily believe.

H. P. CADWELL.

"Sworn to before me and subscribed to in my presence by the said H. P. Cadwell, July 28, 1886.

"A. CAMBELL,
"*Justice of the Peace.*"

(Record, 75–77.)

None of the parties defendant answered except Maria J. Galliher, the appellant, all others making default.

The cause being at issue on September 29, 1886, it was referred to Elwood Evans, referee (Record, 34), to take the testimony and make report, who on March 4, 1887 (Record, 34–67), having taken the testimony, submitted his report, the cause was tried by the district judge, Hon. Frank Allyn on July 15, 1887 (Record, 83), who took the same under advisement, and on July 28, 1887, filed an opinion, of which the following is a copy:

Opinion of Judge Allyn of the District Court.

In the District Court of the Second Judicial District, holding terms at Tacoma.

H. P. CADWELL
vs.
MARIA J. GALLIHER. } Opinion of Court.

About March 1st, 1886, plaintiff filed her petition showing that she was in possession of a certain body of land in Pierce County, and claiming to be the absolute and unqualified owner of same; that defendant made some claim therein, and asked to have her title quieted.

In July, 1886, defendant filed her answer, denying plaintiff's title, and alleging title in herself by virtue of an "original entry" on said land by her husband, Silas Galliher, about August 10th, 1872.

To this plaintiff replied, putting in issue the legal effect of said entry of Galliher.

The following facts are admitted: That plaintiff is in possession and has been, through her grantors, under a patent originally issued to Francis B. H. Wing, April 20th, 1882, upon its application of August 30th, 1881; that Silas Galliher, on August 10th, 1872, filed an original entry on this land and soon after died; that his widow, Mary J. Galliher, built a small house and lived there irregularly, off and on, from 1873 until 1875. The Galliher entry was cancelled December 4th, 1879. She thereupon applied to purchase the land, which application was rejected December 14th, 1880, and approved by the department June 1st, 1881, in an order as follows: "It appears that this tract was embraced in the homestead entry of Silas Galliher, made August 10th, 1872. Mr. Galliher died April 18th, 1873, and his entry was cancelled December 14th, 1879, for want of final proof within the statutory period of seven years after due notice. It was competent for his widow to have perfected said entry after his death, under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no claim thereto until November 23, 1880, the date of her present application."

The foregoing facts are conceded. "It is claimed by defendant that she never abandoned this land, and that

because of this claim, and, further, because the department have in later ruling, made since issuing this patent to Wing, said the ruling should have been different in her case; that she is now entitled to be decreed the property. She admits that when she went to this place from Olympia, in the spring of 1876, she found her house destroyed, and was unable to stay there and returned to Olympia, and that sickness and death in her family rendered it impossible for her to return to the land until the seven years had expired." (Brief of N. S. Porter for M. J. Galliher.)

From Mrs. Galliher's own testimony it is clear she went upon this land about August, 1873, remained until October, returned to Olympia until February, then returned to this land in the fall for a few weeks, and again the following summer a short time, then back to Olympia, and then her last visit, in February, 1876, when she found the house wrecked and never went back. At best, from her testimony, she made flying visits to this land of a few weeks only each spring and fall through a little over two years, having her home all the time at Olympia.

On the other hand, Wing, so far as the evidence discloses, went at once into possession, and has from that day to this held uninterrupted possession, by himself or his successive grantees, under the patent issued him by the Government in 1882.

The attorneys for the defendant claim that even if she did abandon this land, still she has a right existing by virtue of the original entry. This can not be. Such a holding would leave all titles at the mercy of "floating claims" of prior entry and bring about disastrous confusion. *That Mrs. Galliher did in fact abandon this land and intend to do so is patent from the evidence to any disinterested reader.* Whether she did this through force of circumstances, as claimed by counsel, or from her own pleasure is not a controlling question. The *intent to abandon is clear*, and that is the controlling factor.

It is argued, and with considerable ingenuity, that under the act of 1880, by virtue of the original entry, she may after the seven years, if no adverse interest has attached, still perfect it regardless of errors, irregularities, etc. This may be true in the case cited, but in this case to follow that rule we must ignore the abandonment

entirely, as defendant's attorneys seem to do. The fact of abandonment being clear, as I believe, from the evidence, we can not apply the act of 1880 to do defendant any good, for with abandonment the right on which to base her claim vanished. She must have a claim or right existing, and this had gone through abandonment.

If the evidence in this case was less shadowy to support defendant's claim and the facts of abandonment less convincing, there still remains the fact that, though Mrs. Galliher seems to have pursued her claim with reasonable alacrity through the land office, she then stopped, and, although Wing secured a patent in 1882 on application made in 1881 and his successive grantees have since been in possession and disposing of this land, Mrs. Galliher makes no sign of a claim. In fact, years pass and this property increases in value. Still she makes no claim, and even now she is in court as a claimant because brought in by the plaintiff. Her cross-action, with her answer, is filed July, 1886, more than five years after a patent has issued to Wing and more than ten years after she was last upon this land with any intent of remaining, from her own testimony. Had she brought suit promptly or had she brought a suit at all, her claim would have a better light about it; but this property was of little value at the time she abandoned it and apparently not worth the trouble. Afterwards it becomes valuable, and yet she does nothing (knowing she had abandoned it). At length, when plaintiff for some reason serves her with notice, she then, and not till then, seems to amagine her claim to have revived. If on such a state of facts defendant's claim could be maintained against plaintiff's patent, there would be no security whatever in titles. There —, perhaps, few extracts of land over which some floating "original entry" might not be found to vex innocent parties. Had this property not become valuable this claim of defendant's would never have been heard of, which must impress itself as — important fact in this case.

I find no equity in the claim asserted by defendant, Maria Galliher, and decree will go for plaintiff, as prayed, with costs.

July 28, '87.

FRANK ALLYN, *Judge.*

(Record, 79–81.)

Findings of Fact.

The following are the findings of fact and conclusions of law of the District Court:

In the District Court of the Second Judicial District of Washington Territory, holding terms at Tacoma, in and for Pierce County.

Hannah P. Cadwell, Plaintiff,
v.
Thomas Carroll *et al.*, Defendants.

This cause having been regularly called for trial on the 15th day of July, 1887, it still being of the regular June term of this court, and the plaintiff appearing by her attorneys, E. P. Cadwell and T. C. Sears, and the defendant, Mariah J. Galliher, by her attorneys, John P. Judson and Nathan S. Porter, and the evidence being introduced to support the issue of the plaintiff and defendant, and the argument of counsel being heard, and the court, being unable at this time to render a final decision in this cause, and taking the matter under advisement and on the 26th day of July being fully advised in the premises as to the question of facts herein in controversy and the conclusion of law upon said fiindings of facts, finds as follows in the following findings of facts:

That on or about March 1st, 1886, the plaintiff herein filed her petition, showing that she was in possession of a certain parcel of land, to wit, lot four (4), situated in section (10), township twenty north, of range three east, in Pierce County, W. T., and claiming to be the absolute owner thereof; that defendant, Mariah J. Galliher, made some claim thereto and asked to have her title quieted.

In July, 1886, defendant, Mariah J. Galliher, filed her answer, denying plaintiff's title and alleging title in herself by virtue of an original — on said land by her husband, Silas Galliher, about August 10th, 1872.

To this plaintiff replied, putting in issue the legal effects of said entry of said Galliher.

That plaintiff is in possession of said premises and has been, through her grantors, under patent originally issued to Francis S. H. Wing, April 20, 1882, upon his application of August 30th, 1881; that Silas Galliher on

August 10th, 1872, filed an original entry on the land, and soon after died.

That his widow, this defendant, built a small house on said land and lived there irregularly, off and on, from 1873 to 1875.

That the Galliher entry was cancelled by the land department in Olympia, W. T., December 4, 1879.

That she thereupon applied to purchase said land; which application was rejected December 14th, 1880, and approved by the Secretary of the Interior June 1st, 1881, in an order in words as follows:

"It appears that this tract of land was embraced in the homestead entry of Silas Galliher, made August 10th, 1872. Mr. Galliher died April 18th, 1873, and his entry was cancelled December 14th, 1879, for want of final proof within the statutory period of seven years after due notice. It was competent for his widow to have perfected such entry after his death under section 2291 of the Revised Statutes. This she failed to do, but abandoned the land, making no legal claim thereto until November 23d, 1880, the date of her present application."

That the defendant, Mariah J. Galliher, first went upon said land in August, 1873, and made flying visits thereto each spring and fall during the years 1873, 1874, and 1875, and was not in all upon said land to exceed thirty weeks.

That her home in the meantime was in Olympia.

That the defendant, Francis B. H. Wing, went at once into possession of said land, and has ever since continuously, by himself and his successors, held uninterrupted possession of said land since said patent issued to him by the Government, in 1882.

That the defendant, Mariah J. Galliher, wilfully and with full intent to do so abandoned said land in February, 1876, and has not been upon said land or made any claim thereto, to the title, or to the possession thereof, until brought into court by this plaintiff in this suit.

That the defendant, Mariah J. Galliher, has taken no legal steps to assert her claim to said land since the rejection of her claim by the Government, although more than four years after a patent has issued for said land and more than ten years since she was last upon said land with any intent of remaining, and that she now

makes no claim until brought into court by this plaintiff.

That at the time she abandoned said land it was of little value; that when she makes her claim now it has appreciated much in value.

As a conclusion of law from the foregoing facts I find—

That there is no equity in defendant Mariah J. Galliher's claim; that she had no existing right in said land when she applied to purchase the same from the Government.

Therefore, by virtue of the law and by reason of the premises aforesaid, it is hereby—

Ordered, adjudged, and decreed that the plaintiff have judgment or decree as prayed for in her complaint herein against this defendant; that all adverse claims of this defendant and all persons claiming or pretending to claim said premises, or any part thereof, through or under said defendant, are hereby adjudged and decreed to be invalid and groundless; and that plaintiff be, and she is hereby, ordered and adjudged to be the true and lawful owner of the land described in plaintiff's complaint, and every part and parcel thereof, and that her title thereto is adjudged to—quieted against all claims, demands, or pretentions of the defendant, who is hereby perpetually enjoined from setting up claim thereto, or to any part thereof.

Said premises are bounded and described as follows, to wit:

Lot four (4), situated in section ten (10), in township twenty (20) north, of range three (3) east, of what is now known and described as Votaw's addition to the city of Tacoma, as will appear by a reference to the map of said addition now on file in the office of the auditor of Pierce County, Washington Territory.

And it is hereby further ordered, adjudged, and decreed that plaintiff do have and recover her costs and expenses paid herein and taxed at $— against the said defendant, Mariah J. Galliher, and that execution issue therefor; to all of which the defendant excepts.

July 28th, 1887. FRANK ALLYN, *Judge*.

(Record, 85–87.)

A motion to set aside the findings of fact and for a new

trial having been overruled, decree was entered July 28, 1887 (Record, 7), in favor of plaintiff.

From this decree Mariah J. Galliher, defendant below, appealed to the Supreme Court of the Territory, where the cause was heard January 3, 1888, the court through Associate Justice Langford and Chief-Justice Jones delivering the following opinions:

Opinion by Mr. Justice Langford.

In the Supreme Court of Washington Territory.

Mariah J. Galliher, Appellant,
vs.
H. P. Cadwell, Appellee.

Opinion. Rendered January 31, 1888.

Mr. Justice LANGFORD delivered the opinion of the court:

This is a case wherein the appellee brought her suit in the district court against the appellant to quiet title to a certain tract of land.

The appellee holds title by virtue of a patent from the United States to one Wing. The appellant claims that she was entitled to enter the land under the homestead laws long prior to the entry and patent to Wing, which right she was deprived of by an erroneous decision of the Land Department of the United States, and hence is entitled to a decree against appellee that he hold the title in trust for her.

It is conceded by admissions upon the argument that, when this action was commenced, appellee and others holding under the patent had improvements upon the tract of great value, and the tract and improvements thereon are worth about twenty thousand dollars, and this is a test case to try the rights of all holding under the patent.

It is further conceded that Silas Galliher, the husband of appellant, upon the 10th day of August, 1872, made a

formal entry of the tract under the homestead act and died about eight months thereafter at Olympia, W. T.

The first point to be decided is whether this entry was made in good faith or was fraudulent from the beginning.

At the time of the entry said Galliher and his wife had their domicile and home at Olympia, had property there, and were engaged in keeping a hotel there. They had children and were educating them there. Olympia is forty miles from the tract of land in dispute. The tract of land consists of gravelly, barren land, covered with timber, adjoining the city of Tacoma. The husband, during his lifetime of about eight months after the entry, continued his residence and business at Olympia, and during that time had not done anything upon the land except cut down a few trees and a little brush and lay a few logs for the foundation of a log cabin. There is no evidence that he moved to the land or made any preperation to move there or made any declaration of such intent. The character and small amount of land make it extremely improbable that any sane man could have intended at that time to move upon and cultivate this land for the purpose of making a farm out of it as his home. His conduct and words gave no evidence of such intent; his failure to prepare a residence for more than six months and failure to make any change in Olympia which would indicate that he intended to change his residence are circumstances which satisfactorily show that, at the time he made the formal entry, he did not intend to reside upon and cultivate the land as the homestead law requires. The intent must have been to enter the land for speculation, either to use or sell the timber or for some other purpose.

The fact that the land was valuable only for timber, and that its value for all purposes was, some years after his entry, only about three dollars per acre, shows that he never intended to reside upon the land as his home and farm and cultivate it. If his entry was made for any other purpose than this it was fraudulent and void and no equity can be founded upon it.

This is not a case of an originally valid entry afterwards abandoned, but of an originally void entry. The above considerations alone would be sufficient to prevent

any holder of a legal title to be held a trustee for the fraudulent entryman.

It is claimed that Wing, when he made application to enter the land under the timber act, had notice of the Galliher equity. The notice claimed is that the appellant had made an application to enter the land at the U. S. Land Office, which had there been adjudicated against her; that she had filed notice of this in the auditor's office of the county wherein the land is situated; that he could have seen improvements upon the land made by appellant after her husband's death.

First. Of the notice in the auditor's office, it is sufficient to say that there was no law authorizing it, and it was not, therefore, implied notice, and there is no evidence that appellee or Wing ever saw it or heard of it.

Second. As to the log cabin and a little fencing rotting upon the land and the clearing, if any, overgrown with pine timber. These did not tend to prove the land had been occupied at all. The appearances of the land would rather indicate the presence of trespassers on the public land to strip it of timber which had been abandoned by them.

Third. As to the adjudication against appellant in the land office, which was June 1st, 1881. No doubt all parties had notice of this adjudication and many of the reasons given therefor. The adjudication was, in effect, that the appellant had no right to enter the land, and that the land was public land of the United States, subject to entry. This was a binding decision upon all parties until it was reversed, and, instead of being a notice that appellant had a right, it was notice that she had no right. True, the reasons given for the decision might have been erroneous, but, if they were, this did not tend to vitiate the decision itself. No doubt both the appellent and Wing supposed that the reasons given were correct law until long after Wing had received a patent.

True, the affirmative plea that the appellee was an innocent purchaser without notice is not formally made, but each side, without objections, took evidence upon this point, and the case was submitted to the court below upon this evidence without objection to the form of the pleadings. Had the point been made in the court

below that court would rightly have disregarded it or ordered the pleadings to be amended to conform to the evidence. The want of an affirmative plea should have been disregarded in the court below, as it was and will be disregarded here.

The appellant knew of this decision and acquiesced in it without objection until 1884 and long after patent had issued to Wing. She could not have applied to open the case or had a rehearing until 1882, when the Miller case was decided. In the latter case the reasons for deciding the case of Galliher were disapproved.

In the meantime, on the 20th of December, 1881, acting on the decision in the Galliher case, Wing applied to enter. In this application to enter the law requires a notice to be published to all the world of the intended entry. This notice describes the land that is to be entered and states that it is to be entered because it is more valuable for timber than for agriculture. Apellant had this notice, but made no objection to Wing's entry in the United States Land Office or elsewhere until long after Wing had obtained his patent and paid his money. The patent was issued to him April 20, 1881.

The adjudication that this was unoccupied public land, more valuable for timber than for anything else, was the foundation of the patent. This adjudication was binding upon all private parties and upon the appellant among them, and after this judgment by default appellant can not relitigate the question. In 1884 appellant applied to the General Land Office to be allowed to enter. That office wrote her of the above adjudications in that office, and that they were final. From this time the appellant never attempted to set up any claim until she answered in this action. In the meantime the property had been laid out into town lots and valuable improvements put upon them, and after this appellant first makes known that she has a claim and insists upon it. If she had a right, which she had not, and had permitted those sales and improvements without notice she could not now assert a right, but would be estopped from so doing. If she were not entirely estopped she would have to tender payment of the price paid by appellee and the costs of the improvements before she could ask a court of equity to help

her. Instead of this she does not offer to pay anything except the Government price, which would be only a few cents.

The evidence that appellant attempted to perfect her claim by improving the land prior to 1876. If her evidence were conclusive of her *bona fides* it would not avail her, for the original entry, being fraudulent and void, could not be perfected. The evidence is far from showing that she ever intended this claim for her home or farm. It rather discloses the fact that she continued to reside at Olympia, making occasional visits to the land for speculative purposes. No improvements made under such circumstances could in any case give her a right or a perfect right.

Wing never by any act of his prevented appellant from perfecting her claim in the Land Department. He misled that department neither as to law nor fact. Hence this case is not similar to any case cited wherein a patentee was held trustee for another. The equities are as strong in favor of Wing as in favor of appellant, and were he a party his legal title would prevail. Much stronger are the equities of appellee, and for this reason the conclusion is still strong that appellee's title shall prevail.

Let the judgment be affirmed.

W. G. LANFORD,
Asso. Justice.

(Record, 92–95.)

Opinion of Chief-Justice Jones.

From an examination of the Record in this case I can not resist the conclusion that Silas Galliher in his lifetime did not in good faith enter the land in question, and the appellant's subsequent acts lacked the same essential quality. The whole proceeding was one of many similar shams entered upon and persisted in for the purpose of defrauding the Government by a bald pretense of complying with the requirements of the beneficent homestead law, while in fact no such real purpose existed, and they were not complied with or attempted to be.

Instead of acquiring a home or cultivating the soil there may have been in fact a purpose to speculate in the

future—in city lots—but the idea of a homestead never existed.

The judgment should be affirmed.

R. A. JONES, *C. J.*

(Record, 95).

Mr. Justice Turner dissenting, February 2, 1888, the decree was entered affirming the judgment and decree of the District Court (Record, 99, 100). From this decree the cause is now here on appeal by Mariah J. Galliher.

It will be perceived that the appellant claims to be equitably entitled as against plaintiff and every one else to the whole of the land described in the complaint. She bases her claim on the allegation that on the 10th day of August, A. D. 1872, her husband, Silas Galliher, filed as original entryman a homestead entry on said land, containing 57¼ acres, under the act of Congress, approved May 20, 1862, and March 21, 1864, and amendments thereto, known as the "Homestead Acts;" that subsequently he died, and that she, as claimed in answer, *through mistake*, neglected to make final proof on said homestead entry within the time prescribed by law, and that on the 24th day of November, A. D. 1880, she made application to the United States Land Office at Olympia, Washington Territory, to purchase said tract of land under the second section of the act of Congress, approved June 15, 1880, entitled "An act relating to the public lands of the United States," as the widow and heir of said Silas Galliher, and on behalf, as she claims, of the heirs of said Silas Galliher. This application was rejected by the register and receiver of the said land office at Olympia. She took an appeal from said decision rejecting her application to purchase, to the Commissioner of the General Land Office, who sustained the decision of the register and receiver, and on her appeal to the Secretary of the Interior the decision of the Commissioner was affirmed.

The plaintiff's title is derived through entry made by Francis B. H. Wing, August 30, 1881, under the act of Congress entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," approved June 3, 1878, as timber lands. He made final proof thereon December 20, A. D. 1881, per cash entry 8026, and a United States patent for the land in controversy was issued in pursuance of such entry to said Wing, dated the 20th day of April, A. D. 1882. The plaintiff derived title by *mesne* conveyances from said Wing (see Record, 1–18).

The Admitted Facts.

The following facts are admitted in this case:

That plaintiff and her grantors have been in possession of the lands in controversy since August 30, 1881, the date of Wing's entry; that Silas Galliher, the husband of appellant, on August 10, 1872, filed an original homestead entry on the land in question and died April 18, 1873; that the Galliher entry was canceled December 4, 1879; that over a year subsequently her application to purchase the land under the act of June 15, 1880, was rejected, December 14, 1880, and approved by the Secretary of the Interior June 1, 1881, in an order reading as follows:

"It appears that this tract is embraced in the homestead entry of Silas Galliher, made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was canceled December 4, 1879, for want of final proof within the statutory period of seven years after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes. This she failed to do, *but abandoned the land*, making *no claim thereto* until November 23, 1880, the date of her present application."

It will be observed, therefore, by the court that the *question of fact* as to whether or not the appellant had,

prior to her application to purchase, abandoned the land, has been passed upon by the Land Department, the Secretary of the Interior finding that "*she had abandoned the land,* making no claim thereto until November 23, 1880, the date of her application."

It is respectfully insisted that this decision of the Department is not reviewable in the courts and that that decision must, for whatever it amounts to in this case, stand, and, in passing upon the questions involved, this court must proceed in the first place on the assumption, not only that the claim of Silas Galliher had been cancelled by the Department, but also that the appellant *had abandoned the land in question* and all claim thereto *prior* to the date of her application to purchase.

It is Clear the Original Entry of Silas Galliher was Fraudulent, and Hence No Right Either Legal or Equitable Can Grow Out of the Same.

It is clearly manifest however from the testimony in this case that the original entry of Silas Galliher and his whole connection with the land in controvery from the time of his entry until the time of his death was, as stated by Chief-Justice Jones (Record, 95), "*a sham and a fraud,* one of many similar shams entered upon and persisted in for the purpose of defrauding the Government by a bald pretense of complying with the requirements of the beneficent homestead law, while in fact no such real purpose existed and they were not complied with or attempted to be."

If this is true, and it is respectfully insisted that the testimony taken as a whole leads to no other conclusion, then it will scarcely be claimed that the appellant would have any standing whatever in an application to purchase the land in pursuance of the provisions of the second section of the act of June 15, 1880. (21 Stats., 237.)

This proposition is conceded by Associate-Justice

Turner, who dissented from the opinion of the court below.

He says:

"I conclude therefore that the decision on Mrs. Galliher's application to purchase was wrong and that she was entitled to purchase. The last proposition is not true *if the original entry of Silas Galliher was fraudulent. I agree that one can acquire no rights to purchase under the act of June 15, 1880, by reason of an attempt to defraud the Government through and by means of the homestead act.*" (Record,)

To this question of fact, therefore, the contention of the court is first invited. Both the District Court and the Supreme Court of the Territory found the original entry was a fraud. (See opinions of Justice Langford and Chief Justice Jones, *supra.*)

Mr. Justice Langford, in passing upon the case (see opinion, *supra*), says:

The first point to be decided is whether this entry was made in good faith or was fraudulent from the beginning. At the time of the entry said Galliher and his wife had their domicile and home at Olympia, had property there, and were engaged in keeping a hotel there. They had children and were educating them there. Olympia is forty miles from the tract of land in dispute. The tract of land consists of gravelly, barren land, covered with timber, adjoining the city of Tacoma. The husband, during his lifetime of about eight months after the entry, continued his residence and business at Olympia, and during that time had not done anything upon the land except cut down a few trees and a little brush and lay a few logs for the foundation of a log cabin. There is no evidence that he moved to the land or made any preparation to move there or made any declaration of such intent. The character and small amount of land make it extremely improbable that any sane man could have intended at that time to move upon and cultivate this land for the purpose of making a farm out of it as his home. His conduct and words gave no evidence of such intent;

his failure to prepare a residence for more than six months and failure to make any change in Olympia which would indicate that he intended to change his residence are circumstances which satisfactorily show that, at the time he made the formal entry, he did not intend to reside upon and cultivate the land as the homestead law requires. The intent must have been to enter the land for speculation, either to use or sell the timber, or for some other purpose.

"The fact that the land was only valuable for timber, and that its value for all purposes was, some years after his entry, only about three dollars per acre, shows that he never intended to reside upon the land as his home and farm and cultivate it. If his entry was made for any other purpose than this it was fraudulent and void and no equity can be founded upon it."

Mr. Justice Langford, proceeding further, remarks (Record, 93):

"This is not a case of an originally valid entry afterwards abandoned, but of an originally void entry. The above considerations alone would be sufficient to prevent any holder of a legal title to be held a trustee for the fraudulent entryman."

While Chief Justice Jones in his opinion says:

"From an examination of the Record in this case, I can not resist the conclusion that Silas Galliher in his lifetime did not in good faith enter the land in question and the appellant's subsequent acts lacked the same essential quality. The whole proceeding, says Chief Justice Jones, *was one of many similar shams entered upon and persisted in for the purpose of defrauding the Government by a bald pretense of complying with the requirements of the beneficent homestead law, while in fact no such real purpose existed and they were not complied with or attempted to be.*" (Record, No. 7.)

A careful consideration of the testimony more than justifies the above statements and conclusions of Mr. Justice Langford and Chief Justice Jones.

Silas Galliher's Entry was Fraudulent Ab Initio.

What are the facts as disclosed by the testimony surrounding the entry of Silas Galliher upon which the courts below, District and Supreme, held this entry was fraudulent *ab initio* and upon which such claim is now made by the appellee?

They are as follows:

At the date of such entry Galliher, with his wife and five children, was residing in the city of Olympia, distant about forty miles from the land in question, and was engaged in running a hotel in that city (Record, 42). After making the entry, and for over eight months thereafter, he continued to reside in Olympia and continued to carry on his hotel. He never resided on the land. He never attempted to make a residence there, either for himself personally, or for any member of his family. He never erected a house thereon. He never cultivated any portion of the land. The only evidence submitted in the whole case that he ever did anything is the testimony of his widow, the appellant herein, who says (Record, 41) that "*he did some slashing there and laid the foundation for a house.*" This, she says, was done sometime during the winter of 1872.

In addition to this the testimony is conclusive (see testimony of Thomas Carroll, Record, 37; Edward P. Cadwell, Record, 35; Robert Mottan, Record, 59; John A. McGoldrick, Record, 61; Clarence O. Bean, Record, 63; Cornelius C. Wing, Record, 65; Martin Hale Smith, Record, 28, and A. G. Vradenburgh, Record, 30), as to the condition of the land in question for years prior to the entry of Wing as to the absence of improvements, as to its unoccupied condition, and as to its *total unfitness for agriculture.*

It must be remember, moreover, that the Land Department, in passing upon the application of Wing to

purchase, to whom patent was subsequently issued, necessarily passed upon the question of fact that the land in question was unfit for agriculture, was chiefly valuable for timber, and therefore subject to entry under the act of Congress, approved June 3, 1878, entitled, "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," under which Wing obtained title.

Martin Hale Smith (Record, 27, 28) testifies as follows:

Ques. 3. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. I helped survey it yesterday (Dec. 9, 1881).

Ques. 5. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to the said applicant?

Ans. It is not; there are not.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. The nature of the soil.

* * * * * * *

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the timber that is standing on it and *owing to the soil being nothing but a bed of gravel.*

While the witness, A. G. Vradenburgh (Record, 29, 30), states:

Ques. 2. What is your occupation?

Ans. Farmer.

Ques. 3. Are you acquainted with the land above de-

scribed by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. I was all over it to-day for the purpose of inspecting it.

Ques. 5. Is is occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to the said applicant?

Ans. It is not; there are not.

Ques. 6. Is it fit for cultivation?

Ans. Not in my estimation.

Ques. 7. What causes render it unfit for cultivation?

Ans. The nature of the soil is not productive enough for cultivation. It is covered with timber.

* * * * * * *

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. *From the timber on it and the soil being nothing but gravel.*

The foregoing were the two witnesses produced by Wing when he made his entry under the timber act December, 1881.

The Homestead Law Contemplates Actual Settlement and bona fide Residence.

The homestead law (section 2291, U. S. Rev. Stats.) provides that a person to be entitled to a patent under the homestead laws shall prove by two credible witnesses that he has *resided upon* and cultivated the same for the term of five years *immediately succeeding the time of filing the affidavit for entry.*

The homestead laws require a *residence*, both *continuous and personal*, upon the tract of the person who seeks to take advantage of them.

Bohall *v.* Dilla, 114 U. S., 47.

The settler may be excused for *temporary* absences from the tract caused by sickness, well-founded apprehensions of violence, or other like enumerated causes only.

The homestead laws (section 2290 of the Revised Statutes) contemplate "*actual settlement and cultivation of the lands* entered upon the part of the entryman." This section provides that the person applying for the benefit of the act shall "make affidavit before the register or receiver that he is the head of a family, or is twenty-one years or more of age, or has performed service in the army or navy of the United States; and that such application is made for his exclusive use and benefit; and that his entry is made *for the purpose of actual settlement and cultivation*, and not, either directly or indirectly, for the use or benefit of any other person.

On the receipt given by the receiver of the U. S. Land Office at Olympia, to Silas Galliher, on August 10, 1872, when he entered the land in question there was, as there is in all such cases, the following note, being one of the rules and regulations of the Department:

"NOTE—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can at any time after six months pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment."

All the foregoing in connection with the testimony in this case shows clearly that the original entry was a *fraud* and that Silas Galliher committed willful perjury.

It is quite clear therefore—

1. That the *original entry* of Silas Galliher *was an attempted fraud on the Government*; it was an attempt in *bad faith* to secure title to lands not properly subject to homestead entry by virtue of a *pretended compliance with the homestead laws.*

2. That the widow had *abandoned the land in question and all claim to it for nearly five years prior to the date of the application of Wing to purchase under the timber act.*

Under no Circumstances can the Widow of an Entryman under the Homestead laws take under the act of June 15, 1880.

Section 2 of the act of Congress, approved June 15, 18, 1880, entitled "an act relating to the public lands of the United States," and under which the appellant in this case claims to have a standing in a court of equity, reads as follows:

"SEC. 2. That persons who have heretofore under any of the homestead laws entered lands properly subject to such entry, or persons to whom the right of those having so entered for homesteads, may have been attempted to be transferred by *bona fide* instrument in writing, may entitle themselves to said lands by paying the Government price therefor, and in no case less than one dollar and twenty-five cents per acre, and the amount heretofore paid the Government upon said lands shall be taken as part payment of said price: *Provided*, This shall in no wise interfere with the rights or claims of others who may have subsequently entered such lands under the homestead laws."

Point I.

It is respectfully submitted this section was only intended to apply and only can apply to the classes specifically named in its provisions, and can not by construction, be held to include any other. These classes are *two* and *only* two in number:

1st. "Persons" who have at any time prior to the passage of the act entered lands under any of the homestead laws properly subject to such entry. That is the first class; and

2d. "Persons" who are the successors in interest of the persons of the first-class holding such interest by *bona fide* instrument in writing from any one named in the *first* class.

The court will observe no provision whatever is made for any other class of persons. No provision whatever is made for the *widow* or the *children* of either of said two classes. No provision whatever is made for a case such as the one under consideration; that is to say, where a husband has entered lands subject to entry under the homestead laws, and before acquiring title, has died. Conceding, then, that the land in question was entered by Silas Galliher, the husband of appellant, in *good faith*—and this concession is only made at present for the sake of the argument, as it will clearly appear from this Record that the entry was *not* made in good faith, he having died before perfecting title—it is clear his widow, the appellant, had no rights whatever under the section above quoted.

If the *widow* can purchase under this section—not being named in the act—then why not the *heir* or *devisee*, and if the heir, why not a *collateral* heir as well as a *lineal* descendant? Congress has seen proper to confine the privileges of this section to the *entryman*, and to the *person* or *persons claiming under him* by virtue of a *bona fide* instrument in writing, and to extend its privileges by construction to any other person or class of persons, whether widow, heir, or devisee, would, it is respectfully submitted, be judicial legislation.

This construction is made more clearly manifest by a reference to section 2291 of the Revised Statutes (act of June 21, 1866, chapter 127), which provides as follows:

SEC. 2291. No certificate, however, shall be given, or patent issued therefor until the expiration of five years from the date of such entry; and if at the expiration of such time or at any time within two years thereafter, the person making such entry; *or, if he be dead, his widow*; or in case of her death, *his heirs or devisee;* or, in case of a widow making such entry, her heirs or devisee, in case of her death, proved by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit. * * *

The above section cuts a most important figure, performing a double office in connection with this case.

Section 2 of the act of June 15, 1880, under which appellant claims, was based, it is true, in some respects, upon very similar considerations to that of the section of the Revised Statutes just quoted, the purposes of each in so far as it extends certain rights to homesteaders are very similar, the purpose of each being to enlarge the rights of homesteaders; the radical marked difference, however, between the two provisions being this: While the act of June 21, 1866, section 2291, Revised Statutes, gave not only the person making the homestead entry the right at any time within two years after making such entry, but also his widow, in the event of such death, and still further his heirs or devisees in case of the death of the widow, to secure a patent for such land upon proof by two credible witnesses that he, she, or they, as the case may be, have resided on and cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, etc.; whereas the act of June 15, 1880, omits, and evidently purposely, all reference to the widow, the heirs, and devisees of the entryman, and limits the right extended by the second section of the act *solely* to the *entryman;* that is to say, to the "persons," to use the phraseology of the act, who had en-

tered lands subject to entry under the homestead law, and to such other persons as may show themselves to be the successor in interest of the entryman by transfer from such entryman by "*bona fide* instrument in writing." To these two classes, and these two only, is the right given by section 2 of the act of June 15, 1880, to purchase under its provisions.

The reason, doubtless, for thus limiting the scope of the act of 1880, was because of the fact that the rights of the widow and heirs of an entryman were already amply protected by section 2291 of the Revised Statutes.

The appellant in this case clearly had the right under section 2291 of the Revised Statutes to have secured to herself title to the lands in question—notwithstanding the death of her husband, provided such entry was made in good faith, and provided further, that she could show by two credible witnesses that she had resided on or cultivated the land for the term of five years immediately succeeding the time of filing the affidavit; and the Secretary of the Interior in passing upon the application of appellant to purchase under the act of June 15, 1880, very properly said so (see *supra*).

The whole of the opinion of the Secretary rejecting the application of Mariah J. Galliher, appellant herein, is brief, and is as follows:

I have considered the appeal of Mariah J. Galliher, widow of Silas Galliher, deceased, from your decision of September 14, 1880, rejecting her application to purchase under the 2d section of the act of June 15, 1880, lot No. 4, section 10, township 20 N., R. 3 east, Olympia, W. T.

It appears that this tract was embraced in the homestead entry of said Silas Galliher, made August 10, 1872. Mr. Galliher died April 18, 1873, and his entry was cancelled December 4, 1879, for want of final proof within the statutory period of 7 years after due notice. It was competent for his widow to have perfected said entry after his death under section 2291 of the Revised Statutes

This she failed to do, *but abandoned the land*, making no claim thereto until November 23, 1880, the date of her present application.

The 2d section of the act of June 15, 1880, provides "that persons who have heretofore, under any of the homestead laws, entered lands properly subject to such entry * * * may entitle themselves to said lands by paying the government price therefor." * * *

The purchase herein provided is in substitution of the continued settlement and cultivation of five years required by the homestead laws and relates to existing homestead rights. Even the husband of Mrs. Galliher, if living, would have no right of purchase under said act, because his entry has been cancelled, and he would be a stranger to the land and to the record and with no greater right thereto during the continuance of such cancellation than any other person. His widow can have no better right than he.

It is not necessary to consider whether Mrs. Galliher may now make private entry of the tract under other laws, but clearly, in my opinion, under that of June 15, 1880, she has no right of purchase.

Your decision is affirmed. (Record, 23.)

In all the various land laws where the rights of widows and heirs are sought to pe protected, legislation has done so in specific terms. For instance in the act of September 27, 1850, known as the "Oregon Donation Act" (U. S. Stats. at Large, vol. 9, 499), it is provided as follows:

"SEC. 8. That upon the death of any settler before the expiration of the four years' continued possession required by this act, all rights of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent."

This section, it will be perceived, runs on all-fours with section 2291 of the Revised Statutes, protecting the rights

of widows and children of an entryman under the homestead laws, who has deceased before protecting title.

The maxim *expressio unius est exclusio alterius* is applicable to a statutory provision which grants originally a power or right. In such cases the power or right originates with the statute, and exists only to the extent plainly granted. * * * In other words, where a statute gives a *new right* and prescribes a *particular remedy*, such remedy must be strictly pursued, and the party is confined to that remedy.

Sutherland on Statutory Construction, sec. 325, p. 410;

Smith *v.* Stevens, 10 Wall., 321;

New Haven *v.* Whitney, 36 Conn., 373.

If the general purpose of a statute has plain reference to one class of persons it will not include a single individual in a distinct class, although mere words might include him.

U. S. *v.* Loundes, 22 Wall., 492.

When a statute enumerates the persons or things to be affected by its provisions there is an implied exclusion of others; there is then a natural inference that its application is not intended to be general.

Sutherland on Statutory Construction, sec. 327, p. 413;

Wilbur on Statutes, 190.

Three cases are cited by counsel in brief where the Secretary of the Interior has held that the right of an entryman to purchase under the act of June 15, 1880, inures to the widow of the entryman, as follows:

The case of William H. White (9 Copp's Land Owner, 57).

The Northern Pacific Railroad Co. *v.* Burt (12 Copp's Land Owner, 138, 139), and

The Northern Pacific Railroad Co. *v.* McLean (14 Copp's Land Owner, 75).

In the first case, that of William H. White, the Department seems to have taken it for granted without giving any reason whatever that the widow could purchase under the act of 1880.

In the next case, that of the Northern Pacific Railroad Co. *v.* Burt, the only reason given for adhering to this ruling was that inasmuch as Burt could, if living, purchase the tract in question, that then his widow should be allowed the same right by virtue of section 2291 of the Revised Statutes. This is the only argument in the case.

Does it follow, it is submitted to the court, because that section gives the widow a right to complete a homestead initiated and partly performed by her husband and make proof of that fact, and thus obtain title, that therefore she has a right to purchase under the act of 1880, which is an entirely different proposition, and where no reference whatever is made to the widow?

In all these three cases, however, including that of the Northern Pacific Railroad Co. *v.* McLean, *supra*, the lands involved were located within a railroad land grant and some reliance was evidently placed in giving this construction by the Department on the provisions of the first section of the act of April 21st, 1876 (19 Stats., 35). As in the latter case cited above, acting Secretary Muldrow said:

"McLean died the 20th of August, 1882, and Maria McLean, his widow, on March 15, 1883, made application to purchase said land under the act of June 15, 1880, upon the ground that her husband's entry being confirmed by the first section of the act of April 21, 1876 (19 Stats., 35) that payment for the land under the act of June 15, 1880, is equivalent to proof of compliance with the provisions of the homestead law."

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And even this, it is submitted, though presenting a somewhat different case to the one under consideration, is a strained construction and one not warranted by the acts referred to. The question never seems to have been contested before the Department in any case; but in the three cases referred to it has been assumed, as stated, that the widow of the entryman had the right to purchase under the act of 1880.

Point II.

It has frequently been decided by this court, and the law is well settled, that in the absence of fraud the findings of the Secretary of the Interior are conclusive upon questions of fact as to land claims submitted to him for his consideration.

Johnson *v.* Towsley, 13 Wall., 72;
Shepley *v.* Cowan, 91 U. S., 330;
Moore *v.* Robbins, 96 U. S., 530;
Quimby *v.* Conlan, 104 U. S., 420;
Smelting Co. *v.* Kemp, 104 U. S., 636;
Steel *v.* Smelting Co., 106 U. S., 447;
Lee *v.* Johnson, 116 U. S., 48;
Heath *v.* Wallace, 138 U. S., 573.

In the case of Johnson *v.* Towsley (13 Wall., 72) the question as to the conclusiveness of the action of the land office in passing upon questions of fact in issuing a patent on the rights of other persons was reconsidered and former decisions affirmed, and the rule as there stated has been adhered to ever since.

In the case of Lee *v.* Johnson, 116 U. S., *supra*, the court, Mr. Justice Field delivering the opinion, said:

The court does not interfere with the title of a patentee when the alleged mistake relates to a matter of fact, concerning which those officers may have drawn wrong conclusions from the testimony. A judicial inquiry as to

the correctness of such conclusions would encroach upon a jurisdiction which Congress has devolved exclusively upon the Department. It is only when fraud and imposition have prevented the unsuccessful party in a contest from fully presenting his case, or the officers from fully considering it, that a court will look into the evidence. It is not enough, however, that fraud and imposition have been practiced upon the Department, or that false testimony or fraudulent documents have been presented; it must appear that they affected its determination, which, otherwise, would have been in favor of the plaintiff. He must in all cases show that but for the error or fraud or imposition of which he complains, he would be entitled to the patent; it is not enough to show that it should not have been issued to the patentee. It is for the party whose rights are alleged to have been disregarded that relief is sought; not for the Government, which can file its own bill when it desires the cancellation of a patent unadvisedly or wrongfully issued. (*Bohall* v. *Dilla*, 114 U. S., 47; *Sparks* v. *Pierce*, 115 U. S., 408.)

When the legal title has vested equities may be judicially enforced, and when Land Department has committed an error the purchasing party is entitled to relief, Where, however, there was a mixed question of law and fact and the court can not separate it so to ascertain the mistake of law, the decision of the land office affirming right of entry of a party is conclusive.

Marquez *v.* Frisbie, 101 U. S., 473.

Occupation and improvement with view to pre-emption do not confer vested right, but only a preference over others, which is protected as against all save the United States.

Frisbie *v.* Whitney, 13 Wall., 291.

Congress has power to divert that preference by a grant to another.

Yosemite Valley Case, 15 Wall., 77.

What Fact or Facts did the Department of the Interior Pass Upon among Others in Rejecting the Application of Mariah J. Galliher to Purchase under the Act of 1880?

Among other things, the Department *in terms* held on the evidence before it that the applicant, Mariah J. Galliher, had not only failed to avail herself of the right to secure title to the lands in question under section 2291 of the Revised Statutes, but also that she had "*abandoned the land, making no claim thereto until November 23, 1880,* the date of her application." (Brief of counsel for appellant, 14; Record, 86.)

Surely it will not be contended by counsel that if, as a matter of fact, whatever might have been her rights otherwise, the appellant, Mariah J. Galliher, subsequent to the death of her husband, and prior to the passage of the act of June 15th, 1880, had abandoned the land in question, making no further claim thereto on any ground whatever, that she would have any rights or standing before the Department under the act of 1880; and this is a question of fact, and it is a question that was properly before the register and receiver, the Commissioner of the General Land Office, and the Secretary of the Interior when they passed upon her application to purchase under that act; and as has been seen above, the Secretary decided this fact against her. Therefore, under the well established rules of this court that decision is not reviewable, but is conclusive upon the courts and upon the appellent.

Nor can it be said that that question was not properly before the Department for decision.

In the case of Lee *v.* Johnson (116 U. S., 48), opinion by Mr. Justice Field, a very similar question was involved.

In that case the Supreme Court of the State of Michigan was reversed by this court, and among other things we find this in the opinion of the court:

The Supreme Court of Michigan held the decision of the Secretary of the Interior inconclusive because it was not upon a point in issue between the contestants, stating that the question was that of abandonment, which only was inquired into by the register, or could be considered on appeal; that the jurisdiction of the Secretary, if he disposed of the case finally on other grounds, was not appellate but original, and that this had not been conferred; that the register on the hearing and the commissioner on appeal had decided that the plaintiff had not abandoned the land, and upon that ground there was no reversal of the decision. It therefore held that the plaintiff was entitled to the relief prayed.

While there are no formal pleadings in such cases, it is undoubtedly true, as a general rule, that in contested matters before the Land Department, as in those before the courts, the decision should be confined to the questions raised by the allegations of the respective parties, but this rule has its exceptions. If in any case it appears from the evidence that the claim of the complaining or moving party is against public policy or the law, so that in no event could he recover a final judgment or decision, whatever be the nature or extent of the testimony upon the point at issue, the tribunal should not hesitate to dismiss the suit or the proceeding.

An illustration of this rule is found in Oscanyan *v.* Arms Co., 103 U. S., 261. There a large sum was claimed from the vendor of firearms as commissions on sales that, through the influence of the plaintiff, had been made to the Turkish government, of which he was then an officer. The defendant pleaded the general issue; and it was contended that the illegality of the contract could not be noticed, because not affirmatively pleaded. But the court held that, assuming the contract to be a corrupt one, forbidden by morality and public policy, the objection to a recovery could not be obviated or waived by any system of pleading, or even by the express stipulation of the parties; that it was one which the court itself was bound to raise in the interest of the due administration of justice (p. 268).

So, in the present case, the Secretary of the Interior came to the conclusion, from the evidence returned by the register, that Johnson must be considered not as a

bona fide homestead claimant, acting in good faith, but as one seeking, by a seeming compliance with the forms of law, to obtain a tract of land for his son-in-law, who had previously exhausted his homestead privileges, observing that the element of good faith is the essential foundation of all valid claims under the homestead law. Under these circumstances, so far from having exceeded his jurisdiction in directing a cancellation of the entry, he was exercising only that just supervision which the law vests in him over all proceedings instituted to acquire portions of the public lands. Upon the testimony the question of abandonment could be of no consequence, as no just right in Johnson's favor had been initiated. Upon an application for a rehearing, the Secretary reiterated his judgment, stating that he was unable, upon the testimony of Johnson himself, to arrive at the conclusion that he had complied with the provisions of the homestead law to an extent to entitle him to its benefits.

Counsel in brief insists that the rule has been established that cash entry may be made under the second section of the act of June 15, 1880, although the entry may have been void at its inception, and cites the departmental case of George W. Maughn, 9 Copp's Land Owner, 56.

An examination of that case shows that the homestead entry was made in entire good faith, but that the homestead affidavit was made before the clerk of a court, when it should have been made before the land office official. For this reason the homestead entry was declared *technically* invalid, although the good faith of the party was not questioned, and he was permitted in that case to purchase under the act of June 15, 1880, he under his entry having occupied, cultivated, and improved the land.

Point III.

It is insisted by opposing counsel (counsel's brief, 4) that the Secretary of the Interior rejected Mrs. Galliher's application to purchase under the act of 1880 *solely* be-

cause it was not made prior to the cancellation of her husband's entry. This, it is respectfully submitted, is scarcely a correct statement. The adverse decision was based on *three* grounds:

1. That the application was not made until after her husband's entry was canceled, the entry having been canceled December 14, 1879 (Record, 23) and her application to purchase was not made until November 23, 1880 (counsel's brief, 4; Record, 23); and

2. That her remedy was under section 2291 of the Revised Statutes; and

3. That she had abandoned the land, making no claim thereto until November 23, 1880 (counsel's brief, 4; Record, 23).

The first two grounds above stated were matters of law; that is, as to the construction of section 2291 of the Revised Statutes and the act of June 15, 1880, construed as they should be *in pari materia*. The last was a question of *fact;* that is, as to the alleged abandonment of the land by the applicant. If the Secretary erred in construing the law, that error may be corrected here, it is admitted, provided it can be done with full recognition upon the part of the court of the finding of fact, namely, that the applicant had prior to her application abandoned the land, making no claim thereto, which finding under the well-established rule is conclusive on this court.

Point IV.

It is insisted by counsel that the decision of the Secretary of the Interior in the Galliher case of June 1, 1881, was overruled by another Secretary of the Interior on June 3, 1882, over a year subsequently in the matter of the appeal of John W. Miller (Record, 97), and that the

decision in the Miller case has, as stated by adverse counsel, been since followed with one exception to the present time. (See C. L. O., Copp's Land Owner, vol. 9, p. 57.)

This contention is only correct in part. It is true that in so far as the Secretary held in the Galliher case that an entryman had no right to purchase under the act of 1880, after his entry had been cancelled, his decision was overruled in the Miller case and by subsequent decisions in the Department, but it is not true that the decision in the Galliher case to the effect that if the entryman had abandoned the land entered and made no claim thereto prior to her application to purchase under the act of 1880, that then she could have no standing under the act of 1880, has been reversed. There was no question of alleged abandonment of the land in the Miller case. In that case there had been a cancellation of the entry, as stated by the Secretary in his opinion of June 3, 1882, "in less than two months after the expiration of the seven years." From aught that appears Miller was in full and exclusive possession of the land in question, making claim thereto, and had been doing so from the date of his entry. His only failure was to make proof within the seven years as required by the statute. While in the Galliher case it is perfectly clear from the testimony—and this is substantially conceded by Mr. Justice Turner in his dissenting opinion in the court below (Record, 96)—that Mrs. Galliher abandoned the land in question in the spring of 1876.

The following is an extract from the testimony of Mariah J. Galliher, the appellant, on this subject (Record, 44, 45):

Cross-question 40. You say that in 1876 you made your permanent home in Olympia, do you?

Answer. Yes, sir; I did.

Cross-question 41. You did not live upon the land at all after 1876?

Answer. No, sir; I did not.

Cross-question 42. What time in 1876 did you begin to make your permanent home in Olympia?

Answer. Well, I can not tell exact date, but it was in the spring of 1876.

Cross-question 43. During the winter of 1876 was most of your time spent on this place or in Olympia?

Answer. In 1876 I spent in Olympia.

* * * * * * *

Cross-question 45. Your family, all of them, were residing in Olympia during the greater part of the year 1875 and that winter, were they not?

Answer. I was more of the time at Olympia than I was on the claim. (Record, 44, 45.)

* * * * * * *

Cross-question 3. Did you reside upon this land during the time your husband was living?

Answer. No, sir. (Record, 42.)

* * * * * * *

Cross-question 7. At what place did your husband die?

Answer. Olympia.

Cross-question 8. Did you have a home there?

Answer. Yes, sir; we had a home there when he died. (Record, 42.)

* * * * * * *

Cross-question 52. What business had your husband been engaged in prior to his death and was engaged in about the 10th day of August, 1872?

Answer. He was keeping hotel.

Cross-question 53. Was this business continued up to the date of his death, from the time of his entry of the land?

Answer. He had the hotel rented at the time of his death.

Cross-question 54. How long prior to his death was it rented?

Answer. As near as I can remember, I think about six months before he died.

Cross-question 55. Up to that time he had the active management of the hotel himself, did he?

Answer. He was sick a year before he died. I can not say he had the active management at that time.

Cross-question 55. But he was the proprietor and made his home there, did he not?

Answer. Yes, sir.

Cross-question 56. Where was the hotel located?

Answer. In Olympia.

In addition to the above it is furthermore clearly apparent that the home of Silas Galliher during the whole of the time elapsing between the date of his entry and the date of his death was in the city of Olympia, forty miles distant from the lands in question. He never resided upon the lands at all. His entry was made August 10, 1872; he died April 13, 1873.

It seems the ruling, in one aspect of the case at least, of the Acting Secretary of the Interior, affirming the decision of the Commisioner of the General Land Office, in rejecting appellant's application to purchase under the act of June 15, 1880, was subsequently, but not until June 3, 1882 (see the case of John W. Miller, 9 C. L. O.), overruled by the Secretary of the Interior, whereupon, or rather two years afterwards, namely, June 6, 1884, the appellant, through her attorneys, transmitted through the register and receiver of the U. S. Land Office at Olympia, Washington Territory, to the Commissioner of the General Land Office an application for rehearing accompanied by an argument in support thereof, which application was rejected by the commissioner June 20, 1884, in the following communication:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 20th, 1884.*

REGISTER AND RECEIVER, Olympia, W. T.

GENTLEMEN: Referring to your letter of the 6th inst., transmitting an argument by the attorneys for Mariah J. Galliher in the matter of her application to purchase under the act of June 15th, 1880, lot 4, of section 10, t'p 20 N., r'ge 3 east, embraced in h'd entry No. 1615, by Silas Galliher, deceased, your attention is called to my de-

cision of April 22d, 1884, in which your action rejecting her application was affirmed and she was advised that F. B. H. Wing purchased said lot December 20th, 1881, per cash entry No. 6026, and patent issued to him April 20, 1882.

An adverse right has attached to said lot and she can not be allowed at this time to purchase the land. (See the case of George S. Bishop, Copp's L. O. vol. 9, page 95).

The Secretary's decision of June 1st, 1881, in the case Galliber (9 C. L. O., 137) was not overruled by the Department until June 3d, 1882. See the case of John W. Miller, 9 C. L. O., 57.

Wing purchased lot 4 prior to the Secretary's action overruling the Galliher decision, and the attorneys' argument that under the Miller decision it was the duty of this office to instruct the local officers to allow Mrs. Galliher to purchase the land is not applicable. Silas Galliher's homestead entry was cancelled December 4, 1879.

The tract has been patented to Wing and this office has no further jurisdiction in the premises, and if Mrs. Galliher desires to prosecute the case further she must apply to the local courts. Very respectfully,

N. C. McFARLAND,
Commissioner.

Wing's Entry was made with a Clear Record and Without Notice of any Prior Equity.

POINT V.

The court will observe that the application of F. B. H. Wing, the patentee under whom the plaintiff in the court below claims the legal title, made his application to purchase the lands in question December 20, 1881, per cash entry No. 6026. This was 6 months and 19 days subsequent to the decision of the Department of the Interior refusing the application of the appellant to purchase under the act of June 15, 1880, and nearly 18 months prior to the date when the decision in that case was overruled by the Department in the case of John W. Miller, namely, June 3, 1882 (9 C. L. O., 57).

So that at the time of Mr. Wing's purchase, what was the state of the record as to the lands in question? It was as follows:

1. It showed an entry by Silas Galliher under the homestead law, August 10, 1872.

2. It showed that that entry was cancelled by the proper land office officials, December 4, 1879, for want of final proof within the statutory period of 7 years after due notice.

3. That Mariah J. Galliher, as widow of said Silas Galliher, had, on the 23d day of November, A. D. 1880, made application to the register and receiver at Olympia, to purchase the land in question under the provisions of section 2 of the act of June 15, 1880.

4. That this application had been rejected by the register and receiver at Olympia.

5. That on appeal to the Commissioner of the General Land Office, the action of the register and receiver rejecting the claim of appellant had been affirmed.

6. That on appeal to the Secretary of the Interior the action of the Commissioner of the General Land Office, approving that of the register and receiver rejecting the claim of Mariah J. Galliher, appellant, had been affirmed.

Therefore it is perfectly clear that at the date when Wing, the patentee, made his application to purchase, and for over six months prior to that time continuously, the lands in question so far as shown by the record were public lands of the United States, unappropriated by any person, and no claim pending to the same in any department of the Government by any person, much less Mariah J. Galliher, and that the same was then subject to entry by Mr. Wing.

In this connection the attention of the court is attracted to a statement in the brief of counsel for appellant (pp. 22, 23) made evidently under a misapprehension of the facts. Under the heading "Admitted Facts" (counsel's brief, 21) is the following:

"10. That while this, the said widow's application to purchase this land, was so pending before the Secretary on appeal, and on December 20, 1881, F. B. H. Wing, under whom appellee claims title, entered the land under the act of Congress approved June 3, 1873, entitled 'An act for the sale of timber lands,' etc."

And further—

"That the appellee and all persons under whom she claims title, had notice of the right, title, and interest of appellant in and to this land before they purchased the same."

As has already been shown, *supra*, it is neither an admitted fact, nor is it a fact at all, that the application of Wing to purchase was made while the widow's application to purchase was pending before the Secretary of the Interior on appeal—the appeal to the Secretary, as has already been stated, having been decided adversely to her on June 1, 1881, six months and nineteen days before Wing's entry. Therefore, the conclusion of counsel "that the appellee and all persons under whom she claims title had notice of the right, title, and interest of appellant in and to this land before they purchased the same," is wholly unsupported by anything whatever either in the record or in any matters *de hors* the Record.

NOTICE.

Point VI.

The plaintiff is an innocent purchaser without notice of any equity or claim of equity upon the part of the defendant. The record in this case shows that the plain-

tiff is removed some twelve degrees by mesne conveyances from the original patentee. (See Record, 1–18.)

F. B. H. Wing was the patentee. He deceased; his estate was distributed, Elizabeth Wing, his mother, being his sole heir. (See order of distribution in the matter of the estate of F. B. H. Wing, Record, 12.) Under this distribution the title vested in Elizabeth Wing. She conveyed to J. B. Wing, of Henry County, State of Iowa, July 17, 1883. J. B. Wing and wife, Elizabeth Wing, joining, conveyed the same to Henry L. Votaw and Thomas Carroll, of Henry County, State of Iowa (Record, 10); consideration recited, $2,700. H. L. Votaw and wife conveyed to Albert H. Garretson December 11, 1883 (Record, 9), the undivided one-fourth of the property in question. Thomas Carroll and wife conveyed to Albert H. Garretson, March 14, 1884 (Record, 7), an undivided one-sixth of the property in question. Thomas Carroll and wife conveyed to H. L. Votaw, April 10, 1884 (Record, 3), the undivided one-half of the undivided one-sixth. Several other mesne conveyances were executed (Record, 1–10), but on October 15, 1885, the title to the whole property vested in the plaintiff, H. P. Cadwell (Record, 1).

Mr. Thomas Carroll, in his testimony (Record, 37), says:

Question 3. State if you know the property described in this action; if so, how long have you known it?

Answer. I know the property; have known it since June, 1883.

Question 4. Who was in possession of the property at the time you name when you first became acquainted with it?

Answer. The possession of the property was at that time delivered to me by the administrator of Dr. F. B. H. Wing, deceased. At that time I was an agent for Mrs. Elizabeth Wing, of Salem, Iowa, with power of attorney. She was the mother and sole heir of Francis B. H. Wing, and I took possession of the property for her and at her request.

Question 5. Do you know in whose possession the property has been from that time up to the 17th August, 1885?

Answer. I think I do; some little pieces have been sold out, of which I am not certain about.

Question 6. Please state.

Answer. In the fall of 1883, Mr. H. L. Votaw and myself purchased the property from Mrs. Wing and also from J. B. Wing and his wife, who claimed some interest. I think during March and April, 1884, I sold all of my interest in the property to different parties. Mr. Votaw purchased their interest and cleared off, slashed the timber on the land, and caused the same to be laid off in lots and blocks, and made an addition to the city of Tacoma. Mr. Votaw held the possession himself, with the exception of some lots he had sold, up to the time he sold to Mr. E. P. Cadwell—some time in fall or summer of 1885.

Cross-examined by John P. Judson, Esquire, of counsel for Mariah J. Galliher:

Cross-question 1. When you came here as agent for Mrs. Wing did you go upon the land to ascertain its character and value?

Answer. Yes, sir.

Cross-question 2. How much of the land did you examine?

Answer. I examined all of it.

Cross-question 3. Did you at that time find a house upon the land?

Answer. I did not. There was no house on the land.

Cross-question 4. Did you find any clearing done on the land?

Answer. There was several spots over the land where the growth of timber had been very light and fire had gone through and burned it off. There was no appearance whatever of any clearing purposely made.

On cross-examination Mr. Carroll testified as follows:

Cross-question 8. Have you any interest in this case, Mr. Carroll?

Answer. I have no interest farther than that at one time having been the owner of part of this land.

Cross-question 9. If Mrs. Galliher should succeed in establishing her claim to this land would you not be injured?

Answer. That is a legal question that a court would have to determine. I don't think I would be, being an innocent purchaser, never having heard of Mrs. Galliher nor her claim, there being no record of it, there being no *lis pendens* or other notice of her claim until long after I had disposed of all my interest in the property largely by quit claim deed. I don't think I would be held as a loser or injured. I think my rights would have to be protected. (See also Mr. Carroll's testimony in being recalled as a witness, Record, 59).

It is true plaintiff had notice of the decision of the Secretary of the Interior of June 1, 1881, rejecting the application of appellant to purchase the lands in question. She had a right to reply upon this notice, the effect of which was to clear the record of the Department of all claim to the land, and in this she was supported by the further knowledge of the fact that from the date of such decision of the Secretary of the Interior until the date of her purchase in October, 1885, a period of four years and four months, Mrs. Galliher had set up no claim whatever to the land in question, nor had she made any attempt in court or otherwise to obtain possession of the same or given any notice of any kind or character, public or otherwise, to the effect that she made any claim to the land.

Furthermore there is no evidence whatever in this Record from beginning to end to justify the conclusion that the patentee, Wing, had any notice or knowledge whatever that either Silas Galliher or his widow had ever made any claim to the lands in question. He applied to the proper local land office to purchase the land under the timber act; was told it was public land of the United States subject to entry under the act in question, paid his money, received his certificate and subsequently

obtained his patent; but even had he had knowledge of the decision of the Secretary of the Interior of June 1, 1881, rejecting the application of Mrs. Galliher to purchase the land, he had a right, it is submitted, to rely upon that decision—the more especially as Mrs. Galliher had apparently acquiesced in it, not having made any claim whatever to the land for some months prior to his entry under the timber act. In any event had the widow any rights under the act of 1880, it was simply a *preference right*, and if for any reason the land has been granted to another her right is gone and she can not be heard to complain. (See Authorities, *supra*.)

The plaintiff in this case, therefore, occupies the position, according to the Record, of a purchaser in good faith from parties holding the legal title *without any notice whatever*, either *constructive* or *actual*, of *any equity*, or *claim* of *equity*, upon the part of the appellant.

It is only purchasers from the United States *with notice* of existing equities in favor of third parties whose legal title can be held subject to such equities.

Cornelius *v.* Kessel, 128 U. S., 457.

In the case of Cornelius *v.* Kessel, *supra*, Mr. Justice Field said:

"When the tract which was subject to entry was thus purchased and paid for it ceased to be subject to the disposal of the United States; it was not in equity their property. (Carroll *v.* Safford, 3 How, 440; Witherspoon *v.* Duncan, 4 Wall., 210). The legal title it is true, was retained by them but they held it as trustee for the benefit of the purchaser. They were bound upon proper application to issue to him a patent therefor. If from inadvertence or mistake as to their rights or other cause they afterwards conveyed that title to another, *the grantee with notice* took it subject to the equitable claim of the first purchaser who could compel its transfer to him. In all such cases a court of equity will convert the second purchaser into a trustee of the true owner and compel

him to convey the legal title. (Lindsey *v.* Hawes, 2 Black, 554; Stark *v.* Stars, 6 Wall., 402)."

Where an entry is made on public lands subject to entry and paid for the United States holds the legal title for the purchaser and is bound on application to give him a patent therefor, and if it afterwards convey to another, the purchaser *with notice* takes subject to the equitable claim of the purchaser, who can compel its transfer to him.

Cornelius *v.* Kessel, 128 U. S., 456.

Point VII.

THE TESTIMONY OF APPELLANT DOES NOT CORRESPOND WITH THE AVERMENTS IN HER ANSWER.

The attention of the court is specifically attracted to the averments of the answer of appellant (Record, ; brief of counsel, 10).

In the fourth paragraph of the answer it will be observed that while the defendant avers that after the death of her husband she remained in the sole, quiet, and peaceable possession of the land, blanks are left as to the day, the month, and the year to which said residence continued.

Again the allegation just quoted to the effect "that after the death of her said husband this defendant remained in the sole, quiet, and peaceable possession of the land," is only not supported, but flatly contradicted by the appellant's own testimony in the case (Record, 42). She testifies as follows:

Cross-question 3. Did you reside upon this land during the time your husband was living?

Answer. No, sir.

Cross-queition 4. How long after his death was it before you commenced to live upon this land?

Answer. About three months.

Cross-question 5. Please give the time when you moved upon the land with your family?

Answer. Some time in July; can not fix the date more accurately. It was in 1873.

Her testimony then following is to the effect that she only remained on the land about a couple of months, when she returned to Olympia to live; remained with her family at her home until February of the next year, when she says she returned to the land, remaining there about six weeks (Record, 43); then returned to Olympia to her home and kept house there.

But not only so. Appellant in her answer gives the following reason for not obtaining title under the homestead entry of her husband:

"That, by and through mistake, she neglected to make final proof on said homestead entry within the time prescribed by law."

And further—

"Though she continued in possession of said land, and that on the 24th day of November, A. D. 1880, this defendant made application to the United States Land Office at Olympia, Washington Territory, to purchase said tract of land under the said second section of the act of Congress, approved June 15, 1880, etc., * * * as the widow and heir of said Silas Galliher, and on behalf of the heirs of said Silas Galliher."

Whereas, as a matter of fact, she testifies in the case plainly to the effect that she ceased to reside upon the land in the spring of 1876, nearly five years prior to the time she made application to purchase; that she never resided on it thereafter, or made any claim to it, and to all intents and purposes abandoned it.

The allegations and proofs on the part of appellant, so far from being in accord, are variant and antagonistic.

Point VIII.

Estoppel.

The appellant has been guilty of gross laches in asserting her alleged equities, and is estopped from asserting them.

The court will observe the following dates and transactions connected therewith in considering appellant's equities. Her application to purchase under the act of 1880 was decided finally against her by the Secretary of the Interior, June 1, 1881.

The entry of Wing under the timber act was December 10, 1881 (Record, 27), and patent was issued to Wing April 20, 1882 (Record, 15). The greater portion of the tract in question was laid off into streets, alleys, blocks, and lots as an addition to the city of Tacoma designated as "Votaw's Addition," and the streets and alleys dedicated to the public by the then assignees of the patentee September 26, 1884 (Record, 3), and yet not until some date between March 1, 1886, the date of the filing of the complaint in this case (Record, 71), and July 28, 1876, the date of the filing of the replication (Record, 77), did the appellant assert in any manner in any court, or by any notice, public or private, to any one her claim to hold Wing or his assignee as trustee for her benefit. The first time such claim was made is in her answer filed in this case (Record, 71–74), unsworn to, without date, nor is there any date of its filing. This the court will perceive was nearly six years after the entry of Wing under the timber act, and over four years after the issuance of the patent to Wing, and nearly two years after the greater portion of the land included in the controversy had been been laid off into streets, alleys, blocks, and lots, dedicated to the public and made a part of the city of Tacoma.

It must be further remembered that the land in con-

troversy was at the date of the application of appellant to purchase under the act of 1880 of very little value. According to all the testimony in the case it was a gravel bank, unfit for cultivation, but of some value, chiefly for timber; whereas, the patentee and those claiming under him, had prior to the commencement of this suit (see replication, Record, 76) "expended large amounts of money in improving and laying out said land in city lots, and have built valuable buildings and constructions thereon and have caused others so to do, and have made large and valuable improvements thereon; so that said land has been increased in value in at least the sum of $20,000." (Record, 76.)

This was all done, it will be perceived, by the plaintiff and her grantors respectively, with full knowledge of appellant, and without the assertion of any claim whatever on her part; and not until suit was instituted by the plaintiff to remove certain clouds referred to in the complaint growing out of sundry attachments and executions, when the appellant was also made a party defendant, that she comes into court and insists that the patent has wrongfully been issued to Wing and that it should have been issued to her, and that therefore Wing's assignee, twelve degrees distant from the original patentee, after having made all these improvements and increased the value of the land, shall convey to her.

It is now nearly six years since this suit was instituted. According to the pleadings and the testimony improvements had been put upon the land prior to that date to the amount of over $20,000. While it is not a matter directly in the Record, it is a matter of general knowledge, and something counsel for appellant would scarcely controvert, that the property in controversy is at the present time worth perhaps not less than *three-quarters of a million of dollars*—many of the blocks and lots being occupied and improved prior to the commencement of

this suit under deeds from the grantees of the patentee. This latter appears in the Record. In other words the appellant stood quietly by—witnessed innumerable transfers of portions of the property in question to innocent parties—saw a city built upon it—thousand of dollars expended in improvements—made no protest, and finally, when the property is thus enhanced ten thousand fold, she seeks to recover it, and this, too, without making any tender for moneys expended.

Point IX.

But finally it is insisted on our part that the construction placed on the second section of the act of 1880 by the Secretary of the Interior in his decision in the Galliher case of June 1, 1881, construed as it properly was in the light of section 2291 of the Revised Statutes, was the correct one, and that the subsequent decisions of the Department, commencing with the decision in the case of John W. Miller, decided June 3, 1882 (Record, 97), are not correct expositions of the statute; although under that and subsequent decisions, it is submitted, there is no case that has ever gone to the extent of holding that a person who had made an entry under the homestead laws and subsequently *abandoned the land* entered and *for years made no claim thereto*, had any right to purchase under the act of June 15, 1880, much less has it ever been held that a *mala fide* entry—accompanied by *abandonment*—could entitle such entryman to rights under the act of 1880.

It is respectfully submitted that for the foregoing reasons the decision of the court below should be in all respects affirmed.

JOHN H. MITCHELL,
Attorney for Appellee.

Office Supreme Court U. S.
FILED.
MAR 31 1892
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

MARIA J. GALLIHER, Appellant,
vs.
H. P. CADWELL.
No. 265.

Appeal from the Supreme Court of the Late Territory of Washington.

SUPPLEMENTAL BRIEF.

Points Relied Upon by Appellee.

Point I.

The answer, or cross-bill, of appellant does not state facts sufficient to constitute a cause of suit against the plaintiff, for the reason that a widow of an entryman is not entitled to take under the act of June 15, 1880, under any circumstances.

Point II.

The original entry of Silas Galliher was in bad faith, and fraudulent *ab initio* for the following reasons:

1. The entryman never did reside upon the land, and never intended to reside thereon or cultivate the same; and

2. He never intended to build a residence thereon or improve the same, or *settle* thereon, within the meaning and contemplation of the homestead laws.

Point III.

Because the land was wholly unfit for cultivation and therefore not "*properly subject to such entry.*"

Point IV.

The appellant, if otherwise entitled to purchase under the act of June 15, 1880, lost such right by reason of the fact that she had abandoned the land in question, and relinquished all claim thereto in the spring of 1876, nearly five years prior to the date of her application to purchase under the act of 1880.

Point V.

The appellant is barred by the adjudication of the following questions of fact by the Department of the Interior:

1. In finding in rejecting her application to purchase, that she had abandoned the land in question; and

2. In finding in the application of Wing for patent under the timber act, that the land in question was *unfit for cultivation*, and therefore not subject to homestead entry, and *valuable chiefly for timber*, and in the issuance of the patent to Wing.

Point VI.

She lost such right, in the event she had any, by failing to contest the application of Wing to purchase under the timber act, of which application she had due notice.

Point VII.

She lost such right, in the event she had any, by standing idly by, seeing the land transferred to divers innocent parties, the same laid out into lots, blocks, streets, and alleys, and a city built thereon, and large amounts of money expended in improvements.

Point VIII.

Both Wing, the patentee, and his several assignees, including the plaintiff, are holders of the legal title without notice of any of the alleged equities of appellant.

The foregoing is submitted for the convenience of the court. The points are all made and elaborated in brief filed.

JOHN H. MITCHELL,

Attorney for Appellee.

Office Supreme Court U. S.
FILED.
APR 1 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

MARY J. GALLIHER, APPELLANT,

v.

H. P. CADWELL.

No. 265.

Appeal from the Supreme Court of the late Territory of Washington.

REPLY BRIEF FOR THE APPELLANT.

JOHN B. ALLEN,
Attorney for the Appellant.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1892.

Supreme Court of the United States.

OCTOBER TERM, 1891.

MARIA J. GALLIHER, APPELLANT,
v.
H. P. CADWELL.
No. 265.

Appeal from the Supreme Court of the late Territory of Washington.

Reply Brief for the Appellant.

It is charged that appellant has slept upon her rights and is therefore estopped from asserting them. No statutory limitation has been asserted. The Code of Washington, 1881, section 26, is as follows:

"The period prescribed in the preceding section for the commencement of actions shall be as follows:

"Within ten years:

"1. Actions for the recovery of real property, or for the recovery of the possession thereof, and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action."

Neither is any estoppel in law or fact pleaded or proven. Section 103 of said Code is as follows :

" Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of action, be taken as true ; but the allegation of new matter in a reply is to be deemed controverted by the adverse party, as upon a direct denial or avoidance as the case may require."

It is not alleged either in the complaint or reply that appellee was a purchaser in good faith without notice, but it is expressly alleged that she, and all persons under whom she claims, before the purchase of the land, were fully advised of the entry of Galliher, of the offer of the widow to acquire the land under the act of June 15, 1880, and that their purchase was made with definite knowledge of the fact that the land in dispute was subject to the homestead entry ; that Galliher was a qualified homesteader ; that Maria Galliher was his widow ; that she had complied with the requirements of the act of June, 1880, at a time when no intervening rights existed, and that she had been denied the right to purchase under that act for the sole reason that, as his widow, she had failed to prove up within the time prescribed under the homestead act, and had abandoned the land. Appellee pleads she was fully charged with every fact that would entitle appellant to the land in case the construction claimed for this act is correct.

In her pleading she claimed nothing except upon the hazard of a proper construction of this act. No act or omission on the part of Galliher or his widow, influencing appellee to her prejudice, is alleged or proven. It is neither alleged nor proven that appellee, or any one from whom

she claims title, had any relation with Galliher or his wife or did any act with reference to their conduct. The sole allegation is, they knew of the erroneous decision of the Secretary of the Interior and relied upon it, and upon such reliance had expended large amounts of money in improving the land and constructing buildings. But this affirmative matter in the reply is by section 103 of the Code, if material, "deemed to be controverted by the adverse party as upon a direct denial." No evidence has been introduced to sustain it. In fact, the only evidence furnished this Court upon the subject of values and improvements is in the last pages of appellee's brief, in the nature of original proofs first offered in the appellate tribunal.

The proofs made by appellee respecting the value of the land are as follows:

Thomas Carroll testifies:

Question 5. You may state, if you know, what the value of this land was in the year 1883.

Answer. I can only say that in June, 1883, I offered to sell the land for ten dollars an acre. I was offered but $5 an acre; that was the best offer I could get." (Transcript of Record, p. 59.)

Robert Mottan testified:

Question 8. What was the cause of your going upon this land in 1883 and examining it?

Answer. Mr. Carroll (pointing to Thomas Carroll, Esq.), the gentleman over there, wanted to sell me some of it.

Question 9. State whether you purchased it; if not, why not?

Answer. I would not have it for anything them days. It was no good for the purpose I wanted land. I wanted a garden spot. I offered $3.50 per acre. Carroll wanted $5, and I would not give it." (Transcript of Record, p. 60.)

There was no fraud on the part of Silas Galliher or appellant. The entry was made sixteen years prior to the

enactment of the timber statute under which appellee claims. The land is admitted to be of the class at the time subject to homestead entry.

The Government held it out to any one who might see fit thus to enter it as such land. It is conceded Silas Galliher was a person duly qualified to make such entry. It is conceded he made the entry in all respects conformably to law, and paid the requisite Government fees. This makes a *prima facie* case. Fraud is not presumed, much less is perjury to be. Neither are to be established by mere implication, but must be affirmatively and clearly proven.

If it cannot be thus shown that Galliher was guilty of perjury and fraud in making his entry, no subsequent failure to comply with the law or abandonment of the claim can affect appellant if the construction she claims for the statute be correct.

The only evidence afforded from which fraud can be deduced is that of appellant. From her testimony it clearly appears that she and her husband in perfecting this claim were confronted by a trinity of obstacles—poverty, sickness, and death. At the time of making this entry the Territory of Washington had a population of about thirty thousand people. The evidence warrants the conclusion that Galliher had the faith and sagacity to foresee that in the future a city would spring up on the bay at Tacoma, and acting upon his conviction he made this entry. Although an invalid from the time of his filing in August, 1872, until his death April 13, 1873, he endeavored to make compliance with the law, and evidently inspired his wife and children with the faith that had actuated him, for, promptly after his death, appellee went upon the land with her children, built a house, made a clearing, and expended four hundred dollars in her endeavors to comply with the home-

stead law, but on account of her poverty and her children was compelled to abandon the struggle several years later, as the following citations from the evidence disclose :

Question 9. State whether your husband, Mr. Galliher, is deceased or not, and if so, when he died.

Answer. He is deceased. He died in 1873—April 13, 1873.

* * * * * *

Question 12. You may state whether you made or caused to be made improvements upon the said homestead ; and if so, you may describe them and give their values.

Answer. I made improvements. In the first place, I had a home built ; and next place, I had two acres slashed and cleared, a fence built around the two acres, and then I had an addition built on to the house. Then I had more slashing, but cannot tell now how much it was. I should judge I spent $400, in all, upon the place.

Question 13. Now, you may state, Mrs. Galliher, whether you cultivated any portion of that land.

Answer. Yes, sir; I planted some potatoesthere ; pease; set out some fruit trees.

Question 14. Now, you may state whether or not your husband, Silas Galliher, performed any labor or made any improvements on said land prior to his death ; and if so, what.

Answer. He did some slashing there and laid the foundation for a house.

Question 15. State the time he did that work, if you can ?

Answer. I cannot, exactly ; it was in the winter—sometime during the winter of 1872.

Question 16. State what you did after his death ?

Answer. I went on the claim with my family to live. My family consisted of five children, who were with me. They were all minors.

Question 17. State the manner how your house was furnished ?

Answer. I had everything necessary to keep house

with—what you would need for housekeeping—stove, chairs, two beds and bedding, dishes, &c.

Question 18. You may state whether you continued to reside there, or whether you ever moved away with your furniture from that place.

Answer. I never took my furniture away from there. (Record, pp. 41–2.)

* * * * * * *

Cross-question 44. During the winter 1875–6, or that preceding your making your permanent residence in Olympia, was most of your time spent on this place or at Olympia?

Answer. When I went to the place in February, 1876, I found everything had been taken away; the floor had been taken up, and I had no money to replace it. I spent more time in Olympia than I did on the place, because we had sickness in the family. (Record, p. 45.)

* * * * * * *

Cross-question 92. Ceased to make it your home, then, in the spring of 1876, did you?

Answer. Yes, sir; I had to. My money was all gone, and I had no way on it to make a living in 1876. I could not support my family if I remained there, and I had no money.

Cross-question 93. Was that the reason that you left the place—because you could not make a living on the place?

Answer. I had not enough improvements to make a living; that is the reason that I left the place.

Cross-question 94. Did you acquire some means after leaving the place and before you made application to purchase the land other than you had at that time; if so, from what source, and how much?

Answer. I had none at my command to buy the land with, or rather to improve the land. I got some money, but had to pay it out for debts after I had left the land. I got money in 1880 with which to purchase the land. I received it from my husband's estate.

Other witnesses corroborated appellant's testimony.

Edgar A. McCoy:

Question 3. Now, you may state when and how often you have been upon that land.

Answer. I have been on it a great many times since 1879.

Question 4. You may state whether you ever saw any improvements on the same; and, if so, describe them.

Answer. I have seen a one-story log house located in a clearing, with the remains of a fence about—a rail fence on the clearing.

Question 5. Fix the date, as near as you can, when you last saw these things.

Answer. In the latter part of June, 1883.

Zerelda N. McCoy:

Question 3. You may state when and how often you have been upon the place from memory.

Answer. I have been on the place a great many times since the spring and summer of 1882.

Question 4. Now you may state whether or not you saw any improvements on that place; and, if so, describe them and when you last saw them?

Answer. I saw a log house surrounded by a clearing of several acres on which were the remains of a rail fence. I last saw them in July or August, 1883.

Byron Barlow:

Question 3. You may state whether or not you saw improvements upon that land; and, if so, you may describe them and tell when you last saw them?

Answer. I have seen improvements on the land. I saw a house, a small piece of clearing—should judge an acre or two—and a fence around the clearing in 1874. I am not certain that it was the last time I saw it, but I then saw them. I cannot say certainly whether it was in 1874 or 1875 I last saw them.

Question 4. You may state whether or not you are acquainted with the defendant, Mrs. Galliher; and if so, how long you have known her?

Answer. I am acquainted with her. First became acquainted with her in the winter of 1869 and '70.

Question 7. When you were upon the land in controversy did you ever see Mrs. Galliher residing there; and if so, how often did you see her there?

Answer. I saw her residing there. I saw her there on several different occasions. I could not state just how often.

The statute of June 15, 1888, is a highly remedial and beneficent act. It was made for the benefit of those who had not complied with existing homestead laws, and the absolute grant of right to purchase was extended to those who had not or could not for any cause comply. It was not a statute of exclusion, selecting favored classes and discriminating against others equally meritorious, and who had *ex industria* been the objects of the solicitude of Congress in statutes encouraging the building of homes upon the frontier. It is not only a remedial statute, intended to embrace all who had been provided for under existing homestead laws, but in its generosity one of enlargement, taking into its provisions a class of persons, namely, those to whom the homestead claimant had attempted to transfer his right. It would be a reproach to the intention of Congress to shut out the widow and the heir from such a statute.

A liberal construction of the statute is required to give effect to the purpose of Congress. But one limitation was placed upon this right of purchase, and that was that its exercise should not interfere with the rights or claims of those who may have subsequently entered such land under the homestead laws.

JOHN B. ALLEN,
Attorney for Appellant.

E. A. F.—Exhibit No. 1. Henry Hooper, U. S. Commissioner.

[Sample.]

Agent issuing will stamp inside here.

TEN (10) TRIP TICKET
BETWEEN
CHICAGO (D), ILLS.,
AND
SOUTH CHICAGO ILLS.
AGENT'S CHECK.
To be detached and preserved as record of sale.
Sold ——, 188—. Rate, ——

PENNSYLVANIA COMPANY.
TEN (10) TRIP TICKET.
This ticket & each coupon attached thereto will entitle the *bearer* to one *passage* between
CHICAGO (D), ILL.,
AND
SOUTH CHICAGO, ILLS.
Good for one year only from date stamped.
E. A. FORD,
Gen. Pass. & Tkt. Agt.
(Across the face:) On sale.

TEN (10) TRIP TICKET.
Chicago (D) & South Chicago.
Not good if detached.
9

TEN (10) TRIP TICKET.
Chicago (D) & South Chicago.
Not good if detached.
8

TEN (10) TRIP TICKET.
Chicago (D) & South Chicago.
Not good if detached.
7

TEN (10) TRIP TICKET.
Chicago (D) & South Chicago.
Not good if detached.
6

TEN (10) TRIP TICKET.
Chicago (D) & So. Chicago.
Not good if detached.
5

TEN (10) TRIP TICKET.
Chicago (D) & So. Chicago.
Not good if detached.
4

TEN (10) TRIP TICKET.
Chicago (D) & South Chicago.
Not good if detached.
3

TEN (10) TRIP TICKET.
Chicago (D) & So. Chicago.
Not good if detached.
2

TEN (10) TRIP TICKET.
Chicago (D) & So. Chicago.
Not good if detached.
1

E. A. F.—Exhibit No. 2. Henry Hooper, U. S. Com.

[Sample.]

CHICAGO, ST. LOUIS & PITTSBURG R. R. CO.

Good only one year from _____.

TEN (10) TRIP TICKET.
This ticket will entitle
BEARER
To 10 trips between
Chicago (A), Ills., & _____.
Subject to conditions on back.

No. —. E. A. FORD,
Gen. P. & T. Agt.

5 6 7

This coupon in connection with 10 TRIP TICKET No. — Is good for the first passage between Chicago (A), Ills., and _____ Conductor must lift & return this immediately.

10 9 8

AGENT'S STUB.
10 TRIP TICKET No. —
Sold to _____
Not good for passage.
Chicago (A), Ills.,
and _____

4 3 2 1

The conditions upon which this ticket is sold by the Chicago, St. Louis & Pittsburg R. R. Co. and purchased & used by the holder, are as follows:

1. That this ticket will be good only for one year from date of sale, stamped & written hereon by selling agent.
2. That no stop-over will be issued on this ticket.
3. That passage shall be taken only on trains stopping regularly at stations named in the ticket.
4. That one number shall be cancelled by the conductor each trip.
5. That I have no claim for rebate on account of the non-use of this ticket from any cause.
6. That it conveys no privilege to transport goods or express matter.
7. That the right of the company is conceded to change the time of arrival or departure of its trains, or to diminish their number at his option.
8. That this ticket is to be surrendered to the conductor on the last trip taken during the limit for which it is used
9. That the privileges of subsequent commutation will be forfeited by any violations of these conditions.

Scale 5 Chs. to an inch

Var. 16°57' E

R. 10. E. T. 7 N. R 11. E

Mount Diablo Meridian

Spring Hill and General Gold Q.M. Lot No 40

Keystone Gold Quartz Mine

Medean Gold Quartz Mill e Lot No 3

Herbertville Quartz Mine Lot No 42

South Keystone Q.M. Lot No 61

Lot No 38

Lot No 80.

Lot No 46

Post L.P.

Post S.S.E.S.

Post S.S.H.4.

Post S.S.H.8.

Post S.S.H.7.

Post S.S.H.6.

Post S.S.H.5.

Post 42 S.S.H.2

Line

Area 7.43 Ac.

Area 9.61 Ac.

Shaft

Stake

Stone Post S.S.

Ravine

Gulch

French Gulch

Lode

Halstead Mill Site

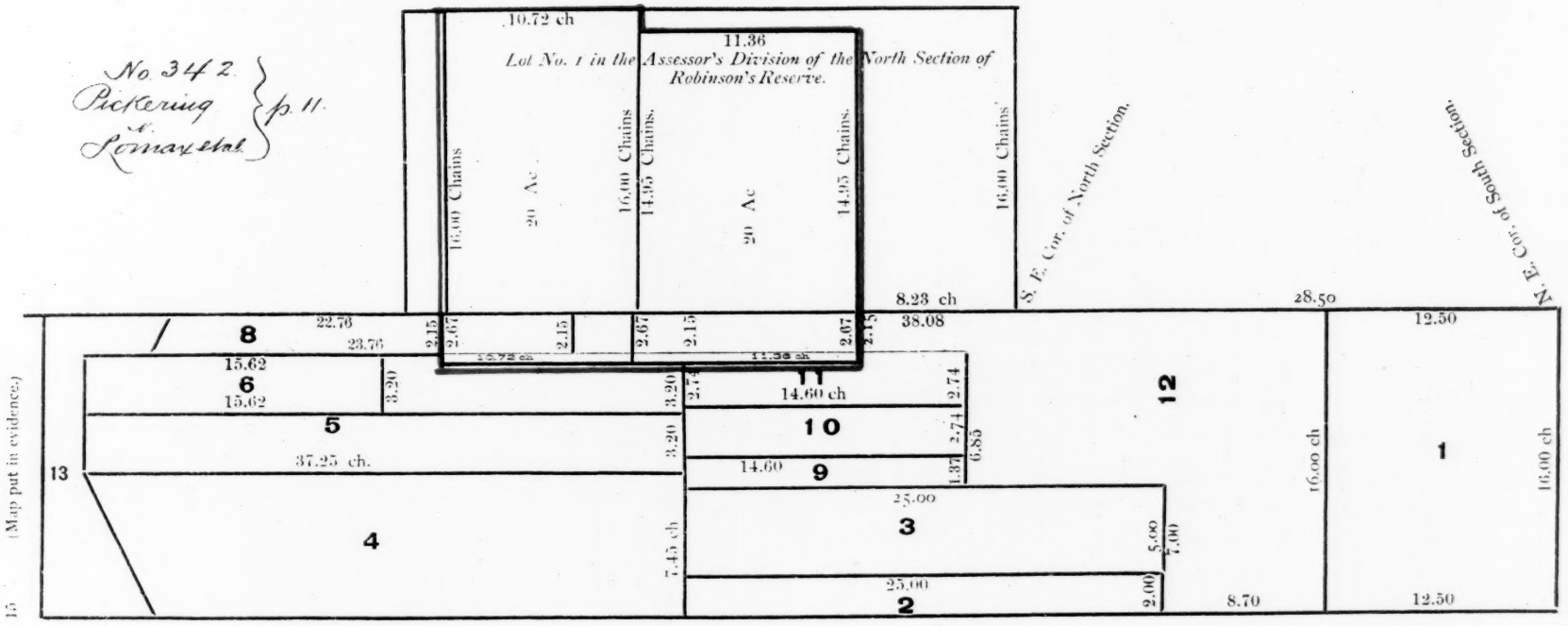
Sec 31

36. 31.

1. 6.

No. 1516. The S.S.H.G.M.Co. v. The A.M.G.M.Co. } p. 53.

G


No. 342.
Pickering
&
Romaxetal
p. 11.
10.72 ch
11.36
Lot No. 1 in the Assessor's Division of the North Section of Robinson's Reserve.
16.00 Chains
20 Ac
16.00 Chains
14.95 Chains.
20 Ac
14.95 Chains.
16.00 Chains
S. E. Cor. of North Section.
N. E. Cor. of South Section.
8.23 ch
28.50
38.08
12.50
22.76
23.76
2.15
2.67
2.15
2.67
2.15
2.07
2.15
15.72 ch
11.36 ch
8
15.62
6
15.62
3.20
3.20
2.74
14.60 ch
2.74
12
5
10
3.20
2.74
6.85
37.25 ch.
13
14.60
9
1.37
25.00
4
3
7.45 ch
5.00
7.00
16.00 ch
1
16.00 ch
25.00
2.00
2
8.70
12.50
(Map put in evidence.)

Gallisher
Caldwell
} p. 7

VOGAWS ADDITION

40

TACOMA

W.T.

Exhibit C

Filed Feb. 11. 1888.
Elwood Evans
Referee

Vogaws Addition to Tacoma, Pierce County, W.T.; comprises the following described tract or parcel of land, viz:— All of lot four in Section Ten, Township Twenty North, of Range Three East. The streets, alleys and blocks, are a continuation of the system pursued by the Tacoma Land Company in their first Addition to Tacoma.

The streets being Eighty feet wide, alleys twenty feet wide, and lots twenty-five feet by one hundred and thirty feet (25×130), there being twelve lots in a block. The positions of stone monuments placed are shown by blue circles upon the above plat. Distances are in black figures.

I certify the above to be true, and the surveys for the same to have been made with care and accuracy, and according to law governing the same.

E. C. Bean
City Surveyor
Tacoma
W. T.

Washington Territory } ss
County of Pierce }

We hereby certify that we donate and dedicate to Public use the streets and alleys as herein platted

H. L. Volaw (Seal)
Annie J. Volaw. (Seal)

Territory of Washington } ss
County of Pierce }

This certifies that on this (8th) Eighth day of November in the year of our Lord one thousand eight hundred and eighty four before me a Notary Public in and for Pierce County Washington Territory personaly appeared the above named H. L. Volaw and Annie J. Volaw his wife whose names are subscribed to the foregoing instrument as parties thereto personaly known to me to be the individuals described above and who executed the above deed and acknowledged the same to be their free act and deed for the uses and purposes therein specified.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Thomas Carroll
Notary Public in and
for Washington Territory

Filed and Recorded
Sept 26 1884
W. B. Kelly - by Andrews